

EXHIBIT

D

DEPOSITION OF JIMMY BARKER

January 23, 2006

Pages 1 through 205

**CONDENSED TRANSCRIPT AND CONCORDANCE
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1	IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION	1 PLAINTIFF'S EXHIBIT INDEX
2	MELVIN LOWE, Plaintiff,	2 6 Notice of taking deposition 6
3	6 Vs. CIVIL ACTION NO. 2:05-CV-0495	3 7 Professional Development Plan for Mr. Lowe 54
4	7 MONTGOMERY COUNTY BOARD OF EDUCATION; VICKIE JERNIGAN, 8 MARK LABRANCE, TOMMIE MILLER, MARY BRIERS, DAVE BORDEN, 9 HENRY A. SPEARS and BEVERLY ROSS, in their official capacities as 10 members of the Montgomery County Board of Education; and DR. CARLINDA 11 PURCELL, in her official capacity as Superintendent of the Montgomery County 12 Board of Education, 13 Defendants.	4 8 Investigation file on Southlawn matter 83
14	14 * * * * *	5 9 Collection of Mr. Lowe's PEPE evaluations 96
15	15 DEPOSITION OF JIMMY BARKER, taken pursuant to stipulation and agreement before Pamela A. Wilbanks, 16 Registered Professional Reporter and Commissioner for the State of Alabama at Large, in the Law Offices of 17 Hill, Hill, Carter, Franco, Cole & Black, 425 South 18 Perry Street, Montgomery, Alabama, on Monday, January 19 23, 2006, commencing at approximately 1:10 p.m.	6 10 Rehire document for Mr. Lowe for Daisy Lawrence 109
20	20 * * * * *	7 11 Salary step correction for Mr. Lowe 109
21	21 * * * * *	8 12 Non-renewal form dated 5/13/05 for Mr. Lowe 113
22	22 * * * * *	9 13 Request for Professional Leave/Detached Duty forms 143
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1	2 APPEARANCES	1 STIPULATION
2	3 FOR THE PLAINTIFF:	2 It is hereby stipulated and agreed by and
3	4 Mr. William F. Patty	3 between counsel representing the parties that the
4	5 Ms. Tonya Dugas	4 deposition of JIMMY BARKER is taken pursuant to the
5	6 BEERS, ANDERSON, JACKSON, PATTY & VAN HEEST Attorneys at Law	5 Federal Rules of Civil Procedure and that said
6	7 250 Commerce Street Montgomery, Alabama 36104	6 deposition may be taken before Pamela A. Wilbanks,
7	8 FOR THE DEFENDANTS:	7 Registered Professional Reporter and Commissioner for
8	9 Ms. Elizabeth Carter	8 the State of Alabama at Large, without the formality
9	10 HILL, HILL, CARTER, FRANCO, COLE & BLACK Attorneys at Law	9 of a commission, that objections to questions other
10	11 425 South Ferry Street Montgomery, Alabama 36104	10 than objections as to the form of the question need
11	12 ALSO PRESENT:	11 not be made at this time but may be reserved for a
12	13 Mr. Melvin Lowe	12 ruling at such time as the said deposition may be
13	14 * * * * *	13 offered in evidence or used for any other purpose by
14	15	14 either party provided for by the Statute.
15	16 EXAMINATION INDEX	15 It is further stipulated and agreed by and
16	17 BY MR. PATTY 5	16 between counsel representing the parties in this case
17	18 BY MS. CARTER 193	17 that the filing of said deposition is hereby waived
18	19 BY MR. PATTY 202	18 and may be introduced at the trial of this case or
19	20 * * * * *	19 used in any other manner by either party hereto
20	21	20 provided for by the Statute regardless of the waiving
21	22	21 of the filing of the same.
22	23	22 It is further stipulated and agreed by and
23		23 between the parties hereto and the witness that the

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Page 7

1 signature of the witness to this deposition is hereby
 2 waived.
 3
 4 *****
 5

JIMMY BARKER

6 The witness, after having first been duly
 7 sworn to speak the truth, the whole truth and nothing
 8 but the truth testified as follows:
 9

EXAMINATION

10 BY MR. PATTY:

11 Q. Please state your name for the record.

12 A. Jimmy Barker.

13 Q. Mr. Barker, my name is Bill Patty, and I
 14 represent Mr. Lowe in this case.15 MR. PATTY: I'm going to mark for
 16 the record Plaintiff's Exhibit
 17 6. It's a 30(b)(6) notice of
 18 deposition, and I assume we're
 19 going to just take his deposition
 20 and the 30(b)(6) deposition
 21 together as one deposition, not
 22 depose him on one and then depose

- 1 Q. Where did you obtain that degree?
 2 A. Alabama State University. I have an
 3 educational specialist degree in mathematics
 4 education in approximately '78 and a master's
 5 in business administration from Auburn
 6 University at Montgomery generally in the 1980
 7 range and an administration certification from
 8 Auburn University at Montgomery maybe in 1987.
 9 Q. And tell me briefly your work history.
 10 A. I've worked as a classroom teacher with
 11 Montgomery Public Schools -- Well, let me go
 12 back prior to that.
 13 I spent two years immediately after
 14 finishing college in the Armed Services in the
 15 U.S. Army as a draftee.
 16 Q. Did you get an honorable discharge?
 17 A. Got an honorable discharge in October of
 18 1974. I assumed a teaching position at Robert
 19 E. Lee High School as a mathematics teacher in
 20 October of 1974 upon leaving the service. I
 21 remained in that position as a classroom
 22 teacher until 1987 at which time I was
 23 assigned as an administrative assistant,

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1 MS. CARTER: Yeah. I don't have a
 2 problem with that. If something
 3 pops up that I think is
 4 relevant -- I can't think of what
 5 it would be that would need to be
 6 some kind of separation for some
 7 reason. So that's fine.
 8 (Plaintiff's Exhibit 6 marked for
 9 identification.)

10 Q. Let me show you Plaintiff's Exhibit 6 and ask
 11 if you're prepared to testify on those areas
 12 that are set out in that deposition notice.

13 MS. CARTER: It would be subject to
 14 the objections that we made.

15 A. I am.

16 Q. Let me get some background information.

17 Can you tell me your date of birth?

18 A. January 28, 1950.

19 Q. And your educational background? College and
 20 on.

21 A. I have a B.S. degree in mathematics from
 22 Alabama State University in 1972, a master's
 23 in mathematics education, 1976 I would say.

1 probably the more common vernacular is an
 2 assistant principal, at Capitol Heights Junior
 3 High School where I remained for the next six
 4 years in the same capacity. In 1993 I was
 5 promoted to principal of Brewbaker Junior High
 6 School. I remained there for two years. In
 7 1995 I was transferred to principal at Goodwyn
 8 Junior High School. Remained there for three
 9 additional years. In 1998 I was promoted to
 10 the position that I currently hold, which is
 11 assistant superintendent for human resources
 12 with Montgomery Public Schools.

13 Q. Have you worked anywhere other than Montgomery
 14 Public Schools? Anything on a part-time
 15 basis?

16 A. On a part-time basis, I've worked at Auburn
 17 University at Montgomery as a mathematics
 18 instructor in the math department as an
 19 adjunct and also in the same capacity at
 20 Alabama State University.

21 Q. Did any of your educational background deal
 22 with personnel management?

23 A. Specifically, no.

	Page 9	Page 11
1 Q. Do you have a teaching certificate?	1	our objection that there would
2 A. Yes, I do.	2	not be relevance unless it was
3 Q. And what is your certificate in?	3	the same kind of allegations.
4 A. It itemizes those areas I just alluded to a	4	But anything that he can remember
5 moment ago: mathematics education as well as	5	that was Title VII involved I
6 supervision and administration.	6	don't have a problem with.
7 Q. Has your certificate ever been the subject of	7	A. You're waiting on me?
8 any discipline from the state department?	8	Q. Uh-huh (positive response).
9 A. No.	9	A. Let's see if I can recall. A David Burkett
10 Q. Have you ever been sued before?	10	filed a suit against the school district
11 A. As a representative of the school district,	11	saying that individuals of a race other than
12 yes, I have.	12	he and a gender other than he received
13 Q. What was that case?	13	favorable treatment in employment for
14 A. Well, there are several.	14	coaching -- various coaching positions
15 Q. Several? All right.	15	throughout the school district. Pam Cloud
16 A. Yes.	16	filed a lawsuit against the school district
17 Q. Give me the ones that you remember.	17	saying similar situations: race other than
18 A. The ones that kind of stick out in my mind,	18	she received favorable consideration for
19 EEOC complaints in terms of discrimination,	19	administrative positions, assistant
20 whether it be on a racial basis or a gender	20	principals, school-wide instructional
21 basis. It kind of goes with the territory of	21	assistants. These are but four that are on
22 being HR director that if you hire one gender,	22	the tip of my mind.
23 you get a suit from the other. If you hire	23	Q. Can you think of any others that were
	Page 10	Page 12
1 one race, you get a suit from the other. So	1	complaints, lawsuits or EEOC charges regarding
2 it's just kind of commonplace for me to get	2	discrimination?
3 sued in one capacity or another.	3	MS. CARTER: That he's named in or
4 Q. Well, how many of these lawsuits do you think	4	just -- Okay.
5 there are or have been?	5	A. I can't think of another just outright.
6 A. Maybe over the eight years, probably a half	6	Q. Can you think of any lawsuits or matters that
7 dozen.	7	were maybe settled before a lawsuit where
8 Q. Do you recall the litigants, the individuals	8	there's an allegation that you or someone in
9 who brought the lawsuits?	9	the school had retaliated against someone for
10 A. Most recently there was a classroom teacher --	10	exercising First Amendment rights?
11 Well, most recently was Mr. Lowe's EEOC.	11	A. No, I cannot.
12 That's the one that I remember most recently,	12	Q. Do you recall any other lawsuits in your years
13 the one that was -- dealt with an EEOC	13	with the school system that are not -- you
14 complaint. Prior to that there was a	14	weren't named personally but were lawsuits
15 classroom teacher who was non-renewed at the	15	regarding discrimination claims?
16 end of the probationary period who claimed	16	A. Discrimination claims?
17 that she was non-renewed based upon her age	17	Q. Yes.
18 because younger applicants received the	18	A. No. I don't specifically, no.
19 position which she was non-renewed for.	19	Q. In each one of these four you gave us -- Well,
20 Q. What's her name?	20	strike that.
21 A. S-C-H-W-E-E-R-S. I can't pronounce that.	21	The three that you gave us that's not
22 MS. CARTER: I'm going to let him	22	Mr. Lowe, were there any accusations that you
23 answer these, but we don't waive	23	did something actively in those cases?

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- 1 A. No.
 2 Q. I'm not really speaking of the school, but
 3 have you been sued personally other than these
 4 lawsuits?
 5 A. My name has been mentioned in the line of
 6 officers of the school district, but other
 7 than that, no. I haven't been sued
 8 personally, no.
 9 Q. I was getting more if you've been named as a
 10 personal defendant in any lawsuit.
 11 A. No.
 12 Q. Okay. Have you ever sued anyone?
 13 A. No, I have not.
 14 Q. Have you ever filed any complaints with the
 15 EEOC?
 16 A. No, I have not.
 17 Q. You were a little hesitant on that one. Can
 18 you explain that?
 19 A. There was a time when the superintendent was
 20 being hired -- the current superintendent was
 21 being hired. There was an effort to
 22 circumvent the process. I filed, along with
 23 another superintendent in the school district,

- 1 court.
 2 A. Federal court.
 3 Q. Who was your attorney in that case?
 4 A. The attorney was Mr. Theron Stokes with AEA.
 5 Q. Do you have any relatives that live in south
 6 central Alabama over 19?
 7 A. I grew up in the Montgomery area, so I have
 8 various and sundry cousins and nephews and
 9 nieces. In my immediate family, my brother
 10 resides here in Montgomery.
 11 Q. What's his name?
 12 A. Napoleon Barker.
 13 Q. And are your parents still alive?
 14 A. No, neither of my parents are alive.
 15 Q. And Napoleon Barker, is he married?
 16 A. No. He's divorced.
 17 Q. Do you remember his former spouse's name?
 18 A. Annie Vicky Barker. It was Walker prior to
 19 being Barker.
 20 Q. Do you know where he works?
 21 A. He is confined in a nursing home.
 22 Q. Do you have any other siblings that live in
 23 Montgomery?

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- 1 paperwork to keep that process from going
 2 forward. It was not an actual EEOC claim. It
 3 was just filing to force the school district
 4 to follow the established procedure.
 5 Q. Was it a court filing? A lawsuit?
 6 A. It was a court filing.
 7 Q. Who else was involved in that suit with you?
 8 A. The other complainant was Lois Johnson,
 9 assistant superintendent.
 10 Q. And that was filed I guess after Mr. Carter
 11 was leaving and before Dr. Purcell was hired?
 12 A. That's correct.
 13 Q. Was that involved during the period I guess
 14 when there was some movement or some
 15 indication by the board they may be hiring
 16 Mr. Looney for superintendent?
 17 A. That is correct.
 18 Q. Any other court proceeding or actions have you
 19 filed?
 20 A. No, I have not.
 21 Q. Would this lawsuit have been filed here in
 22 circuit court or federal court?
 23 MS. CARTER: It was in federal

- 1 A. No.
 2 Q. Any uncles or aunts that live in the
 3 Montgomery area?
 4 A. No.
 5 Q. When you say cousins, how many are we talking
 6 about?
 7 A. Cousins by way of marriage. My wife has --
 8 She also grew up in this area, and she has
 9 various nieces and cousins. All of them are
 10 related to me by marriage but not by birth.
 11 Q. What was your wife's maiden name?
 12 A. Queen Williams. Queen Ether Williams. And
 13 it's Ether, not Ester, as you would commonly
 14 expect.
 15 Q. Are her parents still living?
 16 A. No.
 17 Q. Does she have any brothers and sisters in the
 18 Montgomery area?
 19 A. She's an only child.
 20 Q. How do we get all the cousins then?
 21 (Off-the-record discussion.)
 22 A. She grew up in a household wherein there were
 23 eleven siblings, all of whom were technically

Page 17	Page 19
1 her uncles and aunts. But she always referred 2 to them as her sisters because they were of 3 the same age, her sisters and brothers. 4 That's where the offsprings come from.	1 superintendent or with the superintendent. 2 Most likely -- Most generally that person will 3 pass that complaint along to HR, which I head 4 up at this particular moment, and we will look 5 into that complaint to see whether or not 6 there's any validity to it.
5 Q. Can you give me just last names generally of 6 the cousins?	7 Q. Does the person need -- Before an 8 investigation is done by the school, does the 9 person need to file an EEOC complaint or can 10 they -- will the school look into it if the 11 person simply comes to the school first and 12 says, I have this complaint I'm making?
10 A. Okay. Ware, W-A-R-E, Washington, several 11 groups are in the Washington. McCall, 12 Robinson. That's basically it.	13 A. Generally the supervisor, principal, assistant 14 principal, or whatever the person might be 15 will get in touch with central office, HR. 16 They will be directed by some means to get in 17 touch with central office, and we will look 18 into it to see whether or not that complaint 19 is just that, a complaint, or whether or not 20 it is a grievance. If it's a grievance, of 21 course, we follow a prescribed procedure. And 22 if it's a complaint, then, of course, we look 23 into the matter, but we notify the individual
1 Q. Can you give me their names and ages please?	Page 20
2 A. Jermyn, J-E-R-M-Y-N, Barker, 33 years of age. 3 Resides in Atlanta, Georgia. Brandon Barker, 4 27 years of age. Resides in Hoover, Alabama.	1 that there's a distinct difference between the 2 two.
5 Q. Do you belong to any organizations or clubs in 6 the Montgomery area, south Alabama?	3 Q. Y'all's policy and practice is to notify the 4 individual after you get the document in about 5 the grievance policy or grievance procedure?
7 A. I'm a member of a fraternal group.	6 A. No. If a person is saying that I have filed a 7 grievance, for example, to clarify what I was 8 saying, we look into -- Grievance procedures 9 with Montgomery Public Schools require that 10 you have violated some policy. Very often an 11 individual will think that they have a 12 grievance when in essence what they have is a 13 complaint.
8 Q. What is that?	14 When they come to us filing a grievance or 15 what they suspect to be a grievance and it 16 does not rise to that level, we bring it to 17 their attention. We will not place you in the 18 protocol of a grievance hearing at this 19 particular point because we see no essence 20 with regard to a violation of policy. We 21 bring that to their attention. Then we begin 22 to look into the complaint by contacting the 23 individuals who may be involved.
9 A. Omega Psi Phi Fraternity, Incorporated.	
10 Q. Any other groups or clubs?	
11 A. No.	
12 Q. Are your sons married?	
13 A. Yes, they are.	
14 Q. What are their spouse's names?	
15 A. Brandon's spouse is Koris, K-O-R-I-S. And 16 Jermyn's spouse is Tammy.	
17 Q. What is the process the board uses when it 18 receives notice from an employee that they 19 believe that they have been subject to 20 discrimination?	
21 A. Generally the person will register a complaint 22 with a position -- with a person in a position 23 of authority, such as an assistant	

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- 1 Q. So you notify them that there's -- If y'all
 2 determine it's not a grievance, then you
 3 notify them that y'all have made that
 4 determination because it doesn't violate
 5 policy?
 6 A. Yes, we do.
 7 Q. And a complaint is you've got something you
 8 don't like that's occurred, but it's not a
 9 violation of policy?
 10 A. Exactly.
 11 Q. But you still investigate complaints?
 12 A. We look into complaints.
 13 Q. Now, is all that set out in writing?
 14 A. The grievance policy is, yes.
 15 Q. What about the complaint policy?
 16 A. There's no formal documentation of the
 17 complaint process.
 18 Q. If somebody is filing a complaint or grievance
 19 about something that occurred while they were
 20 employed with the school but they are no
 21 longer technically employed with the school,
 22 what is the policy of the board to
 23 investigating that complaint or grievance?

Page 23

- 1 Q. Does the school system have a policy against
 2 retaliation against an employee for making an
 3 EEOC complaint, bringing an EEOC lawsuit, or
 4 making some complaint about the way that
 5 they've been discriminated against with the
 6 school?
 7 A. Yes. Of course we do.
 8 Q. In order to make something a grievance and to
 9 go through the grievance procedures, does an
 10 individual have to write the word "grievance"
 11 on it?
 12 A. Yes, generally. We require that there's
 13 written documentation. Over the years since
 14 I've been in this position from very early on,
 15 we realized that you needed written
 16 documentation anytime a grievance procedure --
 17 a grievance was being registered simply
 18 because we would have a tendency to begin to
 19 look into a matter and then the person who is
 20 making the complaint withdraws their
 21 complaint. So with it in writing, you have
 22 some authorization to move forward and follow
 23 some formal process wherein word of mouth

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- 1 A. Well, we look into it, but you have to
 2 realize, Bill, that with 4200 employees, 5,000
 3 when you count substitute teachers and
 4 part-time employees, we average a complaint a
 5 day. It's physically impossible to look into
 6 every single complaint that you get. You're
 7 going to get complaints from parents. You're
 8 going to get complaints from employees. So we
 9 get to those as we possibly can.
 10 Q. Does a complaint that involves an allegation
 11 of retaliation with a lawsuit have a higher
 12 priority than somebody who is just complaining
 13 about their kid's class schedule or something?
 14 A. I would think so, yes.
 15 Q. Would a complaint about retaliation with
 16 regard to a lawsuit be one of the highest
 17 priorities?
 18 A. I would think so.
 19 Q. Does the school have a policy against
 20 retaliating against individuals for filing
 21 EEOC complaints or for making a discrimination
 22 claim to the school?
 23 A. Restate that for me, if you would.

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- 1 would get you in trouble.
 2 Q. What if the person sets out various
 3 allegations which are a violation of the
 4 school's policies but they don't put on the
 5 word, this is a grievance? Would that trigger
 6 the grievance procedure?
 7 A. No.
 8 Q. It would not?
 9 A. No.
 10 Q. It would be a complaint, then?
 11 A. It would be a complaint, something that we
 12 would look into and seek some type of counsel
 13 generally as to what course of action to
 14 follow in that case.
 15 Q. Seek some counsel. You mean with lawyers?
 16 A. Possibly. One of the board attorneys or the
 17 other.
 18 Q. Now, what is the school's policy or the school
 19 system's policy if a complaint or grievance
 20 involves the HR department itself?
 21 A. Generally if I get a complaint relative to the
 22 operations of the HR department, I'm going
 23 to -- if it has not already come to me by way

Deposition of Jimmy Barker

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1	of the superintendent, I'm going to make the	1	processes?
2	superintendent aware. And invariably the last	2	A. By and large -- I don't remember what her
3	two superintendents under whom I've served --	3	exact testimony was, but by and large the
4	Dr. Carter and Dr. Purcell -- they are going	4	process goes like this: If a person applies
5	to say, seek out legal counsel with regard to	5	for a particular position, HR department's
6	where should we go from here.	6	first responsibility is to check to see
7	Q. But who would do the investigation of the	7	whether or not that person meets the minimum
8	complaint for the school system? Would the HR	8	qualifications for that particular position.
9	department investigate itself?	9	Then the supervisors who are going to
10	MS. CARTER: Object to form.	10	interview that person, whether they be a
11	A. As a grievance procedure, it's just of such	11	principal, whether they be an assistant
12	that -- I've just recently gone through a case	12	superintendent or specialist, are given a list
13	similar to this so I can tell you exactly what	13	of the individuals who applied for the
14	I told that individual. If you're filing a	14	position in your department who meet minimum
15	grievance against Montgomery Public Schools,	15	qualifications. Then they are encouraged to
16	the grievance procedure starts at a level to	16	interview a representative sample based upon
17	whom the person whom you're grieving against	17	review of resumes and make a recommendation
18	reports. So if it's the HR department, you	18	back to HR of your top candidates for that
19	would have to start your grievance procedure	19	position. Generally we do not allow them to
20	with the superintendent.	20	rank order on paper saying this is my first
21	Q. Right.	21	choice, this is my second choice, this is my
22	A. If it's the superintendent, you would have to	22	third choice. These are my top three choices
23	start your grievance procedure with the board	23	for this particular position
	Page 26		Page 28
1	because the HR department has no authority	1	However, there are generally follow-up
2	over the superintendent.	2	conversations wherein you might make it known
3	Q. Sure. But what if it's a complaint? Who is	3	to someone in HR, well, I really prefer this
4	going to investigate the complaint if the	4	person. I understand that, but give me your
5	complaint is against the HR department?	5	top three choices so that I may submit them to
6	A. Generally we will assure those to whom we	6	the superintendent along with their resume,
7	report, such as the superintendent, the	7	and then the superintendent may very well get
8	validity -- from our perspective the validity	8	back with you and find out, well, who is your
9	of the claims against us, whether or not it	9	first choice or who is your second choice.
10	has any validity -- the complaint has any	10	That does happen in an informal process, but
11	validity and show them and tell them what our	11	on paper, these are my top three choices.
12	particular position is on whatever the issue	12	Q. Would it be correct to say that the hiring
13	is that is being complained about.	13	practices of Montgomery County dictate making
14	Q. Is there any policy by the school system to	14	every effort to follow the recommendations of
15	provide for somebody else outside the HR	15	department heads, supervisors and/or any
16	department to investigate a complaint relative	16	interview panel for positions posted with the
17	to the HR department?	17	school system?
18	A. There's no policy, no.	18	A. Unless there are mitigating circumstances,
19	Q. Now, the superintendent described hiring	19	yes.
20	processes with regard to certified personnel.	20	Q. What kind of mitigating circumstances?
21	While you have been at the Montgomery County	21	A. Such as there are screening panels on occasion
22	School System, has that been -- is she correct	22	that are used to say, well, this category of
23	in the way she's described those hiring	23	applicant here is highly recommended as

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1 opposed to this category here is recommended
 2 with some concern to make sure that they meet
 3 certain specificities. They very well may
 4 meet the overall posted qualifications. A
 5 screening committee may very well be necessary
 6 in order to separate them into tiers of highly
 7 recommended, not highly recommended,
 8 recommended with concern, things of that
 9 nature. That's not out of the ordinary.

10 Q. What job classifications use screening panels
 11 and what do not?

12 A. Most recently the reading coaches and the math
 13 coaches in the school district.

14 Q. When did the reading coaches start using
 15 screening panels?

16 A. Let's see. Our ARFI grant application, which
 17 is Alabama Reading First Initiative, started
 18 in the late summer of '03. Thereafter, in an
 19 effort to control the quality level of the
 20 applicants --

21 (Brief interruption.)

22 Q. I'm sorry. Go ahead.

23 A. In an effort to control the quality level of

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1 not required to do so because that was a
 2 distinctively different function than the
 3 reading coach.

4 Q. How is a reading tutor different from a
 5 reading coach?

6 A. Both are clinical in nature. The reading
 7 tutors were designed primarily to pull out
 8 students who were at-risk students at a given
 9 school site and work with them on an
 10 individual basis to try to bring them from one
 11 level, maybe intensive, up to another level.
 12 They were encountering some difficulties.

13 The reading coaches worked with teachers
 14 in order to bring about the same desired
 15 change. They worked individually
 16 prescriptively with the teachers to bring
 17 about the necessary changes to bring larger
 18 groups of students along from an area of being
 19 at risk to one that is not at risk or to make
 20 academic gains with larger groups of
 21 students. But that was the distinct
 22 difference. The coaches worked with the
 23 teachers, tested, gave feedback, that type of

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1 the applicants from the standpoint of having a
 2 knowledge base that was going to be needed in
 3 order to get that program off and running, we
 4 initiated the screening panels, which
 5 generally consisted of specialists in that
 6 particular area: ed specialists that are
 7 assigned there at the school district,
 8 assistant superintendents who may be over a
 9 program who were over the curriculum and
 10 instruction program. Those were the screening
 11 panels. I even participated on one of the
 12 screening panels myself along with Mike
 13 Looney who was the assistant superintendent
 14 for curriculum and instruction.

15 Q. So when did reading coaches start being --
 16 having screening panels?

17 A. It would have had to have been fall of '03.
 18 The reading program as we know it in
 19 Montgomery Public Schools got off the ground
 20 late summer of '03 until today.

21 Q. Did the reading tutors also go through those
 22 kind of panels?

23 A. The tutors by and large did not. They were

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1 thing, and the teacher-tutors worked with
 2 students by definition.

3 Q. You said something -- You mentioned something
 4 about a requirement that was not there for
 5 reading tutors but was for reading coaches for
 6 panels. Whose requirement are you referring
 7 to that the screening panel be used?

8 A. This is Montgomery Public Schools's --

9 Q. This is no federal --

10 A. No.

11 Q. -- mandate that you do that for reading
 12 coaches?

13 A. No.

14 Q. No state department mandate?

15 A. No.

16 Q. And so it's your testimony reading coaches
 17 have gone -- all the reading coaches then
 18 would have gone through this screening process
 19 from the fall of 2003?

20 A. In one form or another. The composition of
 21 the screening committee may not have been the
 22 same. For example, when you were selecting
 23 system-wide reading coaches, the initial ARFI

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1 application had basically the assistant 2 superintendent for curriculum and instruction 3 in place and the ARFI grant had an 4 administrative officer for that particular 5 program. Teresa Nichols assumed that.	1 Mr. Lowe applied for the position of reading 2 coach -- No. It was '04 -- It would have been 3 the summer of '05, the summer of '05, the one 4 wherein he applied for the position for 5 consideration with Paterson Elementary School.
6 In the early stages of selecting the next 7 system-wide reading coach, those were the two 8 individuals who had any position of knowledge 9 as it related to the program. They 10 constituted the screening committee. Then 11 they brought on the first system-wide reading 12 coach, Teresa Jackson. They participated in 13 that process. Once she came aboard, she sat 14 in on the subsequent committee to select the 15 system-wide reading coaches that were to 16 report to her. After they got on, then we had 17 the specialists within curriculum. For 18 example, the committee that Mr. Lowe was to 19 submit to interview with was comprised of 20 specialists from curriculum and instruction 21 department.	6 Q. Well, Looney wasn't an employee of the school 7 system then, was he? 8 A. Mr. Looney left us at the end of that same 9 summer. Mr. Looney just left us at the end of 10 the '04-'05 school year just after Dr. Purcell 11 came aboard. If you recall, she came aboard 12 in December of '04. Mr. Looney left leaving 13 for another county during that following 14 summer. 15 Q. Well, when did Lowe go through this -- you say 16 he went through in the summer of '05 this 17 Paterson position with Dr. Owens. Do you 18 remember when that was in the summer of '05? 19 A. No, I can't remember. I'm sure that they have 20 documentation. 21 Q. But you remember Looney was on that committee? 22 MS. CARTER: Object to form. 23 A. I remember that Mike Looney participated in
22 Q. Who was the committee that he -- 23 A. I may leave somebody out, but there was Connie	

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1 Mizell. There was Sharon Sewell. There was 2 Tom Toleston. There was Ms. Days (phonetic), 3 Sherry Days. And myself and Mike Looney were 4 in and out on those. We would -- We may not 5 have sat through the entirety of all of them, 6 but we sat in just to ensure that proper 7 procedure was being followed. 8 Q. Which committee are you referring to where 9 Looney would have been on? 10 A. The committee wherein possible reading coaches 11 for the school district were being screened. 12 Q. What time frame is that? 13 A. For schools -- Let me retract that. Not for 14 the reading district, for schools -- for 15 individual schools. This was -- Let's see. I 16 would say at the end of -- during the summer 17 of '03 going into '04 or the summer of '04 18 going into '05. The summer of '04 going into 19 '05. 20 Q. Would -- 21 MS. CARTER: Summer of '04 going 22 into '05? 23 A. The summer of '04 going into '05, when	1 that screening process in and out just as I 2 was because I sat in with him on many 3 occasions, yeah. 4 Q. The committee's interviews, do they take 5 notes? Do they keep those notes in a file on 6 what they found in that interview process? 7 A. They took notes. They had a grading rubric 8 and everything. I'm sure that they may even 9 still have those notes. Connie Mizell headed 10 up that committee, so I would just have to 11 touch bases with her to see whether or not she 12 actually had them. I can't speak for her, but 13 they had a grading rubric. That was my 14 purpose of being there, to make sure we were 15 asking the exact same questions of all of the 16 applicants, that we were following protocol as 17 it relates to good interview procedures. 18 Q. So the questions they were asking were 19 standardized questions? 20 A. They had them scripted. 21 Q. Do y'all still have a copy of those questions? 22 A. I would check with them just to be sure. I 23 would say -- I would expect them to, yes.

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1 Q. Do they make documentation of how they scored
 2 everything?
 3 A. I'm quite sure they probably do.
 4 Q. Does the school system keep that?
 5 A. Yes. They would not have been kept in my
 6 department, in HR. It would have been kept by
 7 the committee, which was headed by Connie
 8 Mizell, so it would be a matter of my touching
 9 bases with her and asking her to reproduce
 10 those individual grade sheets for all of the
 11 applicants.
 12 Q. I'm jumping a little bit ahead, but since
 13 we're there I'm going to ask you. What did
 14 Mr. Lowe score? Do you know?
 15 A. I don't recall specifically his score. They
 16 didn't give me -- I didn't say, well, what did
 17 this particular individual make and what did
 18 that particular individual make. Basically
 19 what I assured the principals of was this: If
 20 you want to interview for a reading coach, the
 21 screening committee has already placed certain
 22 categories of individuals -- certain
 23 individuals in certain categories based upon

1 how well they faired in that screening
 2 process. Touch bases with them to ensure that
 3 you know whether or not this particular
 4 individual comes in a highly recommended
 5 position or whether they are recommended with
 6 some concerns, did not do as well as some of
 7 the other applicants in that overall screening
 8 process, and then interview from among those
 9 individuals who have been approved and then
 10 make the recommendation back to HR in terms of
 11 the person whom you might want based upon your
 12 interview.
 13 Q. Do you remember where Mr. Lowe fell in that?
 14 Was he highly recommended?
 15 A. He was not.
 16 Q. Recommended with concerns?
 17 A. When I -- As was standard with me, if a person
 18 was recommended as a reading coach, my first
 19 thing was to check with the screening
 20 committee and see is this person among those
 21 individuals who were recommended highly by the
 22 committee. They couldn't control the
 23 selection of that person, but I wanted to

10 (Pages 37 to 40)

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1 when the applicants were screened. Yes, 2 Mr. Barker, I'll do so; have Ms. Mizell get in 3 touch with me and give me the names of some of 4 those individuals who were in the upper 5 echelon of that grading rubric. 6 I had Ms. Mizell get in touch with 7 Dr. Owens, give him those names. He 8 rescreened those particular applicants, 9 according to what he told me.	1 A. No. 2 Q. -- or getting what he wants this time? 3 A. Not to my recall. Definitely not. 4 Q. Eleanor Freeney, is she white or black? 5 A. She's black. 6 Q. And she had taught four through six grades as 7 a reading coach before? 8 A. As a reading teacher. As an elementary 9 teacher. 10 Q. Had she ever worked as a reading coach? 11 A. Not to my knowledge, no. 12 Q. Had she ever received the training of a 13 reading coach? 14 A. I cannot say. I don't know. I don't think 15 so. 16 Q. Had she worked as a reading tutor? 17 A. I don't recall. 18 Q. And her highest degree she had at that point 19 was a master's degree? 20 A. Right. 21 Q. Where did she get her master's degree? 22 A. I don't recall, Mr. Patty. 23 Q. She had taught for how many years as a reading
1 selected for that position, was about a 2 15-year -- she was hired by the school 3 district back in the '80s -- the late '80s. I 4 don't remember the exact year. She had an 5 excellent screening score from the screening 6 committee. She had worked exclusively with 7 grades four through six at Brewbaker 8 Intermediate School for the past four or five 9 years, the exact grade levels that was being 10 filled for that particular position. She had 11 a master's degree. She was highly qualified 12 in reading, highly qualified in elementary 13 education. She met all the criteria. She was 14 among those three who were being recommended 15 by Dr. Owens. She obviously was our top 16 candidate, having all of those things that I 17 just mentioned to you. 18 Dr. Owens came back and said, well, if I 19 can't have Mr. Lowe, Ms. Freeney is the next 20 person I would like to have. That's when we 21 exercised that option. 22 Q. Did you ever tell Connie Mizell that Dr. Owens 23 wasn't getting who he wants this time --	1 teacher? 2 A. She had taught as an elementary schoolteacher 3 for -- She had worked consecutively with the 4 school district from the late '80s. I want to 5 say maybe '87, the time that she was hired, up 6 until that particular time -- She had 15 years 7 experience at the time. Fifteen plus. 8 Q. And you say there were -- Your testimony is 9 that you took two names and Mr. Lowe's name. 10 And then I didn't understand. Did you make 11 the decision that Ms. Freeney was a successful 12 candidate or how did -- When you got these two 13 names and Mr. Lowe's, where did it go from 14 there? I didn't -- 15 A. Three names from Mr. Lowe -- I mean, three 16 names from Dr. Owens. Once I received those 17 back -- Well, when I initially received the 18 recommendation from Dr. Owens, I discussed 19 with Dr. Purcell because she had mentioned to 20 me when she placed Dr. Owens there at that 21 particular position that she wanted to put 22 together the strongest possible academic team 23 that she could for that school because they

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had been at risk and their test scores were down from the previous year.

Well, it's my job as HR director or the assistant superintendent for HR to be as familiar with the personnel that's out there as I possibly can. Dr. Owens came from a secondary background, secondary history, never having taught an elementary subject. He had been principal of an alternative site whose primary focus was behavior modification, not academics -- you didn't keep kids long enough to focus on academics -- whose total population average daily attendance was ten. So he couldn't effect any real, meaningful, outstanding academic program. The kids aren't there. The focus is not there.

Mr. Lowe came from this same setting most recently, his familiarity with Dr. Owens. Dr. Owens in good faith recommended him for the position, but it's my position as assistant superintendent to have enough oversight to know whether there's wisdom in your recommendation process. You may very

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setting, at least give him the benefit of your knowledge in terms of trying to ensure that he's going to be successful there.

- Q. I guess I'm reading what you're saying. You're not saying Dr. Owens was not qualified to act as a principal?
- A. No, I'm not. He had the certification, K through twelve for principalship, supervision and administration K through twelve. So he was definitely qualified to do that job.
- Q. Certainly if y'all didn't think he could do the job, y'all could have terminated him?
- A. Yeah.
- Q. That's an option?
- A. We could have.
- Q. Now, let's back up a little bit. I still didn't get from you -- You said at some point this committee -- you get some names from them, and you talk back to Dr. Owens. He still says he wants Lowe, and you take Lowe's name and two other names. I didn't get where you went from that.
- A. I go back to the superintendent at that

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well feel that you're recommending the very best person for it. But from my knowledge base, it's my responsibility to say, well, the background is not there. Dr. Owens, you don't have the academic background in elementary education; let's get somebody who has some extensive background in elementary education as your second person in charge so that we can try to staff this school as effectively as we possibly can.

- Q. Why did y'all pick Dr. Owens as a principal?
- A. Dr. Owens is a contract principal who had just come from an elementary setting, be it not the most pronounced academic setting, but he had just come from an elementary setting, and the law requires that we place him -- that we place him in some similar setting as he was the prior year. Not to say that he could not do the job but that he had not had the demonstration of that simply because he hadn't been placed in that type setting before. If you're going to place him there, as the law required that we do, place him in some type

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particular point, and I discuss the pros and cons of the individuals who were on that three recommendation. This is my recommendation as assistant superintendent to you, Dr. Purcell, in line with your philosophy of trying to place the strongest academic team there that you possibly can.

- Q. So you recommended Eleanor Freeney?
- A. I did.
- Q. So it didn't happen like this, that Mr. Lowe was brought up as recommended by the principal and that was presented to the superintendent, but you've notified the superintendent that they had not gone through the process, and then you came back after that process with names of people who were generated from that process, not Mr. Lowe, and the superintendent picked from that group?
- A. Let me clarify what I think you said, now.
- Q. Yeah.
- A. When he was recommended -- When Mr. Lowe was among the three individuals recommended to me, it was clear -- I don't want to give any

1 distortion of that. It was clear to me that
2 he was the preferred candidate by Dr. Owens.
3 I then go to the superintendent and say I have
4 a recommendation on my desk for Mr. Lowe,
5 among two others, and this is the person who
6 Dr. Owens wants for the position.

7 The superintendent inquires of me, is
8 there anything that would prevent us from
9 offering that position to him -- to Mr. Lowe.
10 And then I say, well, there are some
11 problems. The problem is he's not in the
12 upper echelons of the individuals who were
13 recommended by the screening committee.

14 Mr. Barker, have you talked extensively
15 with the screening committee, something along
16 that line. I'm not quoting her. Yes, I've
17 talked with Connie Mizell; I've gotten her
18 down in my office, and we have talked about
19 the pros and cons; she has pulled his
20 evaluation sheet and told me that he is not
21 the strongest candidate. There are some other
22 candidates that faired better than he in this
23 particular process.

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1 first time you went to her if they hadn't gone
2 through -- if Dr. Owens had not gone through
3 this interview process and you given him names
4 and then he interviewed them and all that?
5 How did you get two names initially to go to
6 her with?

7 A. He had originally interviewed individuals whom
8 he considered to be eligible for the
9 position. From my understanding, he called up
10 Mr. Lowe out of some loyalty to him from
11 having been a former faculty member of his and
12 said, have you been placed yet. This is
13 basically as much as I recall about his
14 conversation with me. He said, I called up
15 Mr. Lowe and asked him if he wanted to
16 interview for the position, having some
17 familiarity with him. And I assume that's how
18 Mr. Lowe's name got on his recommendation
19 list, his not knowing at that time who were
20 the top candidates who were recommended for
21 this particular position by the screening
22 committee and who were not. Ms. Freeney's
23 name was not on the original recommendation

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1 Then Dr. Purcell said, well, have you made
2 Dr. Owens aware of this. Yes, I've made him
3 aware, and I've had Connie Mizell to get in
4 touch with him and give him the names of some
5 of the these stronger candidates. Then at
6 that particular point, of course, he
7 reinterviewed and he came back with this
8 recommendation. And, of course, consistent
9 with what we've done in the past, we can
10 choose from among these three. Based upon my
11 feelings with regard to who is best qualified,
12 then I'm recommending Ms. Freeney for this
13 particular position. That's the way it
14 basically goes -- it went.

15 Q. So you did go to the superintendent twice with
16 this --

17 A. I went to her initially to make her aware that
18 his name had been submitted among two others,
19 and I went back to her after Dr. Owens
20 resubmitted and said that this is the person I
21 still want for that position. So I made her
22 aware of the fact.

23 Q. Well, where did the two names come from the

1 list. Her name was added to the list after
2 the names had been submitted by Connie Mizell
3 as these are the top candidates from the
4 screening process.

5 Then Dr. Owens goes back and interviews
6 those individuals who were submitted on that
7 list. He adds Ms. Freeney's name among the
8 three individuals who were being recommended
9 for it at that time.

10 Q. But the two individuals with Lowe's name the
11 first time, are you saying Dr. Owens just came
12 up with those two on his own?

13 A. I'm not sure exactly how -- what process he
14 followed in that. I'm not sure --

15 Q. They didn't come from the committee?

16 A. They didn't come from the committee. I'm not
17 sure of how he came up with Mr. Lowe's name,
18 other than the fact that he said he did stay
19 in contact with everyone from his prior
20 school.

21 Q. Now, is there anything else you can tell me
22 about Ms. Freeney's qualifications that would
23 be better or more desirable than Mr. Lowe's?

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1 A. Nothing other than what I mentioned to you 2 before, you know.	1 I would merely take the printout of the e-mail 2 that I receive from that principal -- You have 3 to realize that many times these are around 4 the roundtable, eight o'clock at night. 5 Everybody else has gone home, and the 6 superintendent and I are sitting there going 7 over a hodgepodge of various things. So that 8 wasn't a definitive procedure that we followed 9 all the time.
3 Q. Does Mr. Lowe have the minimum qualifications 4 of degrees, education, for the position?	10 Q. What about in Mr. Lowe's case? Do you know if 11 any of your conversations with the 12 superintendent or your meetings with the 13 superintendent or your recommendations to the 14 superintendent regarding Mr. Lowe are in 15 writing?
5 A. It merely required an elementary 6 certification.	16 A. I just don't recall.
7 Q. So he did?	17 Q. Would you keep that in a file? Where would 18 that be kept?
8 A. Yes. Or a certification in reading, one or 9 the other, and he had the elementary 10 certification.	19 A. No. If I submit them to her, there -- I have 20 a file folder that just says recommendations 21 to the superintendent. Most likely I would 22 have some copy of it.
11 Q. And he had performed this job for the 12 principal -- Well, strike that. 13 He worked for Dr. Owens prior to applying 14 for this job. He had worked for him for two 15 previous years?	23 Q. And then any kind of correspondence you
16 A. Yes, he had.	
17 Q. And were you aware that Dr. Owens evaluated 18 him and put down he was a reading coach?	
19 A. No, I'm not aware of that. It would, as a 20 matter of fact, surprise me because of the 21 conversations that we had had earlier when 22 Mr. Lowe was first hired there.	
23 (Plaintiff's Exhibit 7 marked for	
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1 identification.)	1 receive from the principal, would that -- how 2 would that be kept if he's saying I want this 3 person or that person for a job?
2 Q. I'll show you what I'll mark as Exhibit 7. 3 Are you familiar with that document?	4 A. One of two ways. They would generally submit 5 something on a letterhead from their school or 6 they would send it to me more commonly by 7 e-mail.
4 A. Yes, I'm familiar with this document.	8 Q. And how is that kept? When you get that, what 9 do you do with it?
5 Q. What is that?	10 A. I either download it so I have some record 11 that they sent it and then clear it out so as 12 not to --
6 A. This seems to be a professional development 7 plan which is one of the instruments that goes 8 along with our PEPE evaluation which is the 9 adopted method of evaluating personnel 10 throughout the school district.	13 Q. Does it go to their personnel file or --
11 Q. Does it indicate the position that Mr. Lowe 12 has in that document?	14 A. No, it does not go to the personnel file.
13 A. It does.	15 Q. It goes to a file that you maintain there in 16 the office?
14 Q. What does it indicate his position is?	17 A. Yeah. Generally recommendations to the 18 superintendent.
15 A. It says reading coach.	19 Q. When we first started talking about the hiring 20 process with certified personnel, you 21 indicated that there's an interview with the 22 principal, and then you check the minimum 23 qualifications. And then there's I guess a

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1	sample that's put together that goes to the	1 for an employee was not followed through?
2	superintendent for her to decide?	2 A. Since Dr. Purcell -- I'll put that in two
3	MS. CARTER: Object to form.	3 tiers. Since Dr. Purcell has been here,
4	A. Now, the sequence may be reversed.	4 roughly a little over a year ago, I can't
5	Q. Lay it out there again for me.	5 remember a specific position wherein I did not
6	A. Generally if I know that a particular	6 recommend to her the person -- one of the
7	applicant is applying for a given position, we	7 three people who were recommended by the
8	check their qualifications before the	8 committee.
9	principals receive a list and say, well, this	9
10	list of individuals have applied for your	10
11	position; we've checked out their credentials	11
12	and they've met the minimum qualifications.	12
13	However, we don't have total control of	13
14	that process. An applicant, Mr. Lowe or	14
15	anyone else, may very well find out that a	15
16	particular position is being posted, take some	16
17	initiative on their behalf and contact the	17
18	principals themselves. So I may have to check	18
19	the credentials out after the interview	19
20	process as opposed to before simply because	20
21	they've been proactive in terms of contacting	21
22	the principals themselves. If we know ahead	22
23	of time, we check the credentials out and save	23
	Page 58	Page 60
1	the principals that agony of having to select	1 had to get to know everybody.
2	and interview someone and they may not meet	2 Q. Well, can you think of any -- I understand you
3	the qualifications. But we don't always know	3 say that you can't think of anywhere where she
4	ahead of time.	4 hasn't chose from the group of three. Can you
5	Q. It's not uncommon for a principal to say, I'd	5 think of any instance where a principal has
6	really like to hire this person here or that	6 said I want this person and Dr. Purcell has
7	person for a particular job, is it?	7 not hired the person the principal wants?
8	A. It's not. It's not.	8 A. I cannot, simply because I'm not privy to any
9	Q. Now, once the principal comes back and says, I	9 conversations that she might have with the
10	like this person or that person, do you still	10 individual principals. If you recall from my
11	take a sample of persons to the superintendent	11 earlier testimony, I would say, well, give me
12	or do you just take the principal's choice?	12 your top three as is required; give me your
13	A. We take a sampling for most positions. If	13 top three; you may convey to the
14	they are teaching positions and teaching	14 superintendent -- You may call the
15	positions are going to be multi over a given	15 superintendent up and articulate to the
16	period of time, we generally won't require	16 superintendent, well, I feel strongly about
17	that you give me three people for this fifth	17 person A or person B. They don't always share
18	grade position that you have. These are	18 that with me because I force them not to. I
19	generally positions that are contested-type	19 force them to keep it somewhat on an even par
20	positions, ones that are above the teaching	20 with these are my three top candidates. But
21	level.	21 nothing is going to prevent you from calling
22	Q. Can you think of any situations or any other	22 the superintendent up and saying, well, I feel
23	incidences where a principal's recommendation	23 strongly about person A as opposed to person

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1 B.

2 Q. Are you saying, though, that it's not -- it's
 3 uncommon for a principal to say, I want to
 4 hire -- I've looked at these applicants and I
 5 want to hire so-and-so? Don't principals do
 6 that all the time? Say I -- They tell you I
 7 want to hire this person or I favor this
 8 person or I like this person the best?

9 A. On some occasions they may very well do that.
 10 But my instructions to them in general are you
 11 know that I cannot take one recommendation to
 12 the superintendent. Give me your top three
 13 choices so I may submit those. If you feel
 14 strongly about a particular person among them,
 15 I encourage them to call up the superintendent
 16 and let her know. Where I'm at a disadvantage
 17 is, I don't know who does and who doesn't.

18 Q. Did you tell Dr. Owens to call the
 19 superintendent?

20 A. No. I told him that I was going to articulate
 21 to the superintendent who his choice was. He
 22 made that known to me who his choice was. As
 23 I told you, some will tell me, some will not.

1 lawsuit?

2 A. Yes, I did. I talked to Dr. Owens when I
 3 called him up to set up times with him to
 4 appear for depositions.

5 Q. I'm not -- I'm really more talking about,
 6 let's say, prior to June 22, 2005.

7 MS. CARTER: Let me say something
 8 for the record because we don't
 9 mind -- I don't mind you knowing
 10 this. I think that I told
 11 Mr. Barker that Mr. Lowe's
 12 lawsuit had been filed because we
 13 knew he had an EEOC charge. So
 14 it would have been right after it
 15 was filed. I just don't know
 16 when that is.

17 MR. PATTY: That's fine.

18 Q. Did you ever talk to Dr. Owens prior to June
 19 22, 2005 about Mr. Lowe's lawsuit?

20 A. Definitely not.

21 Q. Did you ever tell Dr. Owens that Mr. Lowe
 22 shouldn't have filed a lawsuit?

23 A. Absolutely not.

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1 I try to discourage any of them from doing
 2 so. But Dr. Owens was explicit that he wanted
 3 Mr. Lowe as his first choice for the position.

4 Q. When did you first learn of the EEOC charge
 5 that Mr. Lowe filed?

6 A. It's hard for me to say exactly to put it in a
 7 time frame. It was prior to the
 8 superintendent getting here, and she got here
 9 in December of '04. So I guess it must have
 10 been fall of '04 or late summer of '04.

11 Q. And did you talk to Dr. Owens about that at
 12 all?

13 A. About the EEOC charge?

14 Q. Uh-huh (positive response).

15 A. Absolutely not.

16 Q. When did you find out that Mr. Owens -- Lowe
 17 had filed a lawsuit in this case?

18 A. This lawsuit?

19 Q. Yes, sir.

20 A. I don't remember specifically. I just don't.
 21 The chronology of it just doesn't register
 22 with me.

23 Q. Did you ever talk to Dr. Owens about this

1 Q. What did you do -- What was your role in
 2 preparing a response to the EEOC charge?

3 A. Well, I have to do all of the research with
 4 regard to the various allegations of the EEOC
 5 charge and respond to the various questions
 6 that were being asked.

7 Q. Would you have been the person for the school
 8 system to provide the factual information for
 9 the response to the EEOC charge?

10 A. Yes, I was.

11 Q. Did you look at the response? I know it was
 12 written from your attorney, but have you
 13 looked at the EEOC response?

14 A. I did.

15 Q. And is it accurate?

16 A. As best I recall. I don't have it here before
 17 me right this second. Yes, I assumed that it
 18 is 100 percent accurate.

19 Q. Has anything happened since that time that you
 20 think is now incorrect that you've learned
 21 after the EEOC charge that you said, hey, we
 22 found out this was not right?

23 A. Not to my knowledge, no.

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<p>1 Q. Is the reading coach a ten-month position? 2 A. There's no cut-and-dry answer to that. 3 Reading coaches -- The evolution of reading 4 coaches in our school district came in three 5 tiers primarily. With the original 6 application for the ARFI grant, there were, if 7 I recall, ten reading coaching positions that 8 were ten-month reading coaching positions 9 because the coaches had to be trained.</p> <p>10 Shortly thereafter the next year or within 11 the next year, MPSRI sponsored reading 12 coaches. Montgomery Public Schools Reading 13 Initiative reading coaches were authorized. 14 Those were ten-month positions. Then there 15 were reading coaches who were sponsored 16 through the individual Title I budgets of 17 Title I schools who were brought aboard as 18 nine-month reading coaches because they didn't 19 have the resources to pay them ten months. So 20 there were some that were nine months and some 21 that were ten months based upon the fund 22 source and the resources available to fund 23 those units. All of the ARFI and all of the</p>	<p>1 reading coach position available; I do have a 2 teacher/tutor position available; are you 3 interested in that teacher/tutor position. 4 That clarification was made prior to Mr. Lowe 5 accepting that position. He knew fully well 6 that that was a teacher/tutor position, 7 according to the conversation that I had with 8 his principal. He said he told him this is 9 not a reading coach position; this is a 10 teacher/tutor position; are you still 11 interested. And the feedback he gave to me, 12 yes, I am.</p> <p>13 Q. When were the dates of the ten-month -- the 14 RC ten-month reading -- well, the ten reading 15 coach positions that were ten-month positions, 16 the first level you said?</p> <p>17 A. ARFI?</p> <p>18 Q. Yes.</p> <p>19 A. This was at the end of the summer of '03 going 20 into '04, the '03-'04 school year. This was 21 the first year of our reading program.</p> <p>22 Q. The MPS reading coach authorized ten-month 23 positions, that second level you said, when</p>
<p>1 MPSRI were ten months. There was not a 2 reading coach assigned to Daisy Lawrence where 3 Mr. Lowe was assigned.</p> <p>4 Q. Ever?</p> <p>5 A. There was not a reading coach assigned there 6 by MPSRI or by ARFI. There may have been 7 coaches who were -- There was not anyone 8 assigned permanently to that campus. There 9 may have been someone who may have been 10 providing partial services, but there was not 11 a reading coach assigned there.</p> <p>12 Mr. Lowe's position that he received there 13 as a teacher/tutor was a federally funded 14 Title I type position, and it was a nine-month 15 position. It was not a reading coach position 16 but a teacher/tutor position.</p> <p>17 Let me clarify something for you, Bill. 18 When Mr. Lowe initially sought out that job, 19 he went to Dr. Owens, according to what 20 Dr. Owens said to me, and inquired about a 21 reading coach position. Dr. Owens told him I 22 do not have a reading coach position -- 23 according to what he told me, I do not have a</p>	<p>1 did they start?</p> <p>2 A. Sometime during that same year when funds were 3 solicited from the county commission, 4 Montgomery Public School Reading Initiative. 5 Those funds came throughout that particular 6 year.</p> <p>7 MS. CARTER: What year? I'm sorry.</p> <p>8 THE WITNESS: '03-'04.</p> <p>9 Q. The individual Title I budget nine-month 10 positions, when did that start?</p> <p>11 A. The nine-month positions -- There were always 12 Title I funds that were allocated to various 13 schools. I couldn't give you a definitive 14 time frame as to when that initially started 15 because the schools had been getting Title I 16 funds all along. The key issue with Title I 17 is that there could be no supplanting. By 18 that I mean this: If a school wanted a Title 19 I reading coach and was not already allocated 20 a reading coach from one of these other two 21 sources, they could not have that individual 22 because Title I cannot be the first kid on the 23 block. It has to be in addition to. It has</p>

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1 to be supplemental. And therefore if a school
 2 requested and they already had one of the
 3 other two, I could give them that Title I --
 4 let them use that Title I money for that
 5 purpose. If they requested that and did not
 6 have one of these other two, they could not
 7 because it was a clear supplanting violation.

8 Daisy Lawrence did not have a coach from
 9 the other two funds. They would not qualify
 10 for a Title I reading coach because it would
 11 be supplanting.

12 Q. Well, would there be a -- when did Title I
 13 start using, though, for these nine-months --
 14 when did that begin, using the Title I for
 15 those?

16 A. As early on as when ARFI started. Some of the
 17 ARFI schools would have more --

18 Q. '03?

19 A. -- than one.

20 Yeah. They would have an ARFI coach and
 21 they would have a Title I coach. And they
 22 might very well make that Title I coach in
 23 addition to the ARFI. And the Title I may be

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1 documentation that tells me that?
 2 A. No. You just have to take my word for it.
 3 (Off-the-record discussion.)

4 MS. CARTER: I didn't understand
 5 what your question -- Oh, you
 6 mean because it says various
 7 locations how do you know that
 8 posting in fact related to that
 9 location?

10 MR. PATTY: Yes.

11 A. It would give you some sense of reassurance
 12 the timing of it. The timing of that
 13 particular posted notice was right at the end
 14 of the summer, and Mr. Lowe came aboard in
 15 October -- early October of that same year.

16 Q. Wouldn't there have been also, though, that
 17 same summer a posting that said for reading
 18 coaches, various locations? Wouldn't there be
 19 that kind of posting as well?

20 A. Generally there may have been back near the
 21 first of the summer, yeah.

22 Q. Did Mr. Lowe interview through any committee
 23 for that teacher/tutor position?

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1 a nine-month and the ARFI may be a ten-month.
 2 And they would pay the Title I supplemental
 3 funds for the summer in order to get the
 4 training and that type thing.

5 Q. Was Lowe ever -- Was his name ever listed on
 6 any documents regarding the financial payments
 7 the school was receiving for his position as a
 8 reading coach? Was he ever designated as a
 9 reading coach?

10 A. I couldn't say. Not to my knowledge.

11 Q. Do you know how the position that he applied
 12 for in the fall of -- and received in the fall
 13 of 2003 at Daisy Lawrence, do you know how
 14 that was advertised?

15 A. It was advertised as a teacher/tutor position.

16 Q. We've received a number of documents from
 17 y'all with job descriptions. Was that
 18 advertisement in that material we received?

19 A. It was. It was listed as a Title I
 20 teacher/tutor at various Title I sites. It
 21 was not listed specifically to Daisy Lawrence.

22 Q. How would I know that that's the job
 23 advertisement for that position? Is there

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1 A. I don't recall, because at the time most of
 2 the elementary placements were being handled
 3 through one of my subordinates in the office.

4 Q. When did you get district reading coaches?

5 A. In the initial application process, as I told
 6 you before, Teresa Nichols was the only,
 7 quote, unquote, reading official other than
 8 the superintendent -- assistant superintendent
 9 for curriculum and instruction. Shortly
 10 thereafter they brought aboard whom I
 11 considered to be the first reading coach,
 12 which was Teresa Jackson. That person was
 13 interviewed by Dr. Looney and Teresa
 14 Jackson.

15 Q. Was she a district --

16 MS. CARTER: Teresa Nichols you
 17 mean.

18 THE WITNESS: Yeah, Teresa Nichols.

19 A. She was district. She was the first reading
 20 coach that we had that was applicable to the
 21 entire district. She was actually third guru
 22 in charge of our reading program after she was
 23 selected.

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<p>1 Q. When was that?</p> <p>2 A. That was early on in the process. Maybe late</p> <p>3 summer '03 or very early -- latest, early fall</p> <p>4 '03. But I think late summer '03.</p> <p>5 Q. Would she have been called a district reading</p> <p>6 coach or would she have been called something</p> <p>7 else?</p> <p>8 A. I don't remember the exact nomenclature that</p> <p>9 we used. After that, then, of course, the</p> <p>10 others were interviewed for -- there were</p> <p>11 screening committees involving the principle</p> <p>12 players for the reading program for the</p> <p>13 selection of the other reading coaches. That</p> <p>14 was Connie -- I mean, that was Teresa</p> <p>15 Jackson. That was Teresa Nichols. That was</p> <p>16 Mike Looney. That was Margaret Allen, who was</p> <p>17 a fund source for some of the -- for one of</p> <p>18 the district reading coach positions. She was</p> <p>19 in control of the Title II funds which was</p> <p>20 going to fund one of those. All four of those</p> <p>21 individuals I know sat in on that screening</p> <p>22 committee when the original other district</p> <p>23 reading coaches were selected.</p>	<p>1 raid each other for talent. If Mr. Lowe is</p> <p>2 offered a position with Montgomery Public</p> <p>3 Schools, are you going to perceive it as</p> <p>4 tampering with regard to our entertaining the</p> <p>5 possibility of hiring him. That basically is</p> <p>6 the conversation -- That was the essence of</p> <p>7 it, which is a conversation that happens</p> <p>8 between me and other HR directors throughout</p> <p>9 the contiguous counties all the time. We just</p> <p>10 don't raid each other.</p> <p>11 Q. But do you recall telling him that you were</p> <p>12 hiring Mr. Lowe as a reading coach?</p> <p>13 A. I don't.</p> <p>14 Q. Do you recall telling anyone else with Bullock</p> <p>15 County Board of Education that Mr. Lowe is</p> <p>16 being hired as a reading coach?</p> <p>17 A. I spoke with no one else from Bullock County</p> <p>18 other than Mr. Ballard.</p> <p>19 Q. Do you recall putting together a copy of</p> <p>20 Mr. Lowe's personnel file for Ann Sipial,</p> <p>21 director?</p> <p>22 A. By and large that's not something I would do.</p> <p>23 That's something I would delegate to my</p>
<p>1 Q. Back before Mr. Lowe came back as a</p> <p>2 teacher/tutor, did you have a conversation</p> <p>3 with him and his mother where you informed him</p> <p>4 about the reading coach positions being open?</p> <p>5 A. I don't recall. I remember having an audience</p> <p>6 with Mr. Lowe and his mother on a different</p> <p>7 occasion. I remember them coming to my</p> <p>8 office, but the specifics of that conversation</p> <p>9 just escapes me to tell you the truth.</p> <p>10 Q. When he came back to Daisy Lawrence in the</p> <p>11 fall of '03, he was coming from Bullock</p> <p>12 County. Did you have any conversations with</p> <p>13 any officials at Bullock County about him</p> <p>14 coming back to Montgomery, what he was going</p> <p>15 to do?</p> <p>16 A. I had a conversation with Mr. Lee Arthur</p> <p>17 Ballard, which is protocol among HR circles.</p> <p>18 I did not discuss with him any specific</p> <p>19 assignment that he was to have with Montgomery</p> <p>20 Public Schools. Merely that conversation was</p> <p>21 along the lines of, Mr. Lowe has applied for a</p> <p>22 position with Montgomery Public Schools. We</p> <p>23 have a gentleman's agreement that we do not</p>	<p>1 secretary.</p> <p>2 Q. So your secretary would be the one to copy it</p> <p>3 and put it together?</p> <p>4 A. Most likely.</p> <p>5 Q. Do you know if -- Do you recall that that</p> <p>6 happened, that Ann Sipial requested a copy of</p> <p>7 Mr. Lowe's personnel file?</p> <p>8 A. I cannot say with certainty. I get requests</p> <p>9 all the time from various outlets. I just</p> <p>10 don't recall.</p> <p>11 Q. Do you recall if there were personnel items</p> <p>12 that are now in his personnel file that were</p> <p>13 placed in the personnel file at a much later</p> <p>14 date than his original personnel file --</p> <p>15 placed at a much later date than they were</p> <p>16 generated?</p> <p>17 A. No. I don't have any knowledge of that at</p> <p>18 all.</p> <p>19 Q. Do you recall if there maybe were things</p> <p>20 placed in his personal file post lawsuit or --</p> <p>21 A. Not to my knowledge. Unless they were results</p> <p>22 from the lawsuit or from the EEOC claim that</p> <p>23 were ongoing at that time. I would place some</p>

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1 documentation in there later on once we got a
2 ruling.

3 Q. And y'all would not maintain two personnel
4 files, right?

5 A. Definitely not.

6 (Brief off-the-record discussion
7 followed by a brief recess.)

8 Q. (Continuing by Mr. Patty) Does the school
9 system have a policy with regard to providing
10 personnel file information to the principals
11 for an employee? For instance, if an employee
12 has some prior incident or allegation that has
13 been investigated and that is kept in their
14 personnel file, does the school system have a
15 policy about whether they will provide that to
16 a subsequent principal that employee is
17 working with without it being solicited by
18 that principal?

19 A. Do we have a policy of providing -- Generally
20 our policy with regard to your personnel file
21 is that whether you review it or whether you
22 authorize someone else to review it, that
23 person has to sign saying I've reviewed the

1 about that past situation when it's not asked
2 for by the principal?

3 A. I don't know if it's a violation of a written
4 policy, but it's definitely not good business
5 to share that with another principal, no.

6 Q. Are you aware of the reprimand letter that was
7 written to Mr. Lowe regarding Southlawn being
8 sent unsolicited to Dr. Owens?

9 A. No, I'm not.

10 Q. Who would have access to that personnel file?
11 A. HR department primarily would have access to
12 it, the specialist within the department. Of
13 course, myself being the assistant
14 superintendent. The specialist within that
15 department. We have a director for certified
16 personnel, Carolyn Hicks. We have ed
17 specialists within that determine, and we have
18 various clerical support individuals in that
19 office.

20 Q. Do you ever recall Dr. Owens making any
21 inquiries through your office for information
22 regarding Melvin Lowe, that he wanted to know
23 something about his employment background or

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1 documents on this particular file on this
2 particular day so nothing is added to it or
3 taken from it unknown to us.

4 Q. Would it then violate the board's policy if
5 someone copied materials from that personnel
6 file and sent it to a principal without that
7 principal asking for those materials?

8 MS. CARTER: Object to form.

9 A. That's kind of vague. From the standpoint
10 that if a principal were to ask, for example,
11 is John Doe highly qualified; do you have any
12 verification that he's highly qualified; does
13 he have a valid teacher's certificate for this
14 particular grade --

15 Q. No. I'm not saying it's something the
16 principal has asked for. Let's say there's
17 something that is of an investigation that has
18 been done or a letter of reprimand or prior
19 suspension of an employee, and that employee
20 is working for a principal -- another
21 principal after that fact. Is it appropriate
22 or does it violate board policy for someone to
23 send that principal personnel file information

1 his work there in the school system or
2 anything of that nature?

3 A. I don't.

4 Q. Now, we were provided during discovery some
5 investigation documents regarding Southlawn.
6 Did you conduct that investigation?

7 A. I did.

8 Q. Did Tina Minott conduct an investigation as
9 principal prior to you conducting your
10 investigation?

11 A. One of the requirements for any type of action
12 of that nature is that the principal sends an
13 investigative summary of what the allegations
14 are and what they have been able to discern
15 prior to making the recommendations to the
16 board.

17 Q. Did Tina Minott's investigation clear Melvin
18 Lowe?

19 A. No. Her purpose is not to clear or to
20 corroborate the charges. Her purpose is to
21 provide all the information to my office so
22 that a determination can be made as to the
23 guilt or innocence of the person.

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1	Q. Do you remember if Tina Minott was supportive of Melvin Lowe?	1 to a degree from observation on there that something had transpired. And I recommended a five-day suspension without pay because this was the third time that I had spoken to Mr. Lowe over the past several years with regard to possibly mishandling a child.
2	A. I don't recall specifically.	2
3	Q. Did she believe the allegations true or untrue? Do you recall?	3
4	A. I just don't recall.	4
5	Q. Did Tina Minott recommend that Mr. Lowe receive any discipline?	5
6	A. That's not her purpose to recommend whether or not. The disciplinary end of it generally will come from after I have reviewed all the information, all of the student statements, looked into it. I make a recommendation to the superintendent based upon those observations.	6
7	Q. But often is it not true -- We've had some termination cases before that you and I have been involved in that the principal will recommend particular action take place.	7 Q. Let me show you what I'm going to mark as Plaintiff's Exhibit 8 and ask you if this is the complete investigative file regarding the Southlawn matter.
8	A. Oh, yeah. There's an exuberance on behalf of our principals in a lot of cases that breach protocol. I mean, we have to --	8 (Plaintiff's Exhibit 8 marked for identification.)
9	Q. I'll have to remember it breaches protocol.	9
10		10 A. This seems to be rather comprehensive. This seems to be the file that I would have on file in that school file there at my office, yes.
11		11 Q. As you sit here today, can you think of any documents that are not in this file?
12		12 A. It was so long ago, I couldn't say with any degree of certainty whether there were any other witness statements or anything of that nature.
13		13 Q. Did Tina Minott want to rehire Mr. Lowe for the next school year?
14		14
15		15
16		16
17		17
18		18
19		19
20		20
21		21
22		22
23		23
1	The last time it didn't breach protocol. Anyway, did Tina Minott make any recommendation disciplinary-wise in this case?	1 A. I can't say whether she did or not, but she did not recommend him to me.
2	A. I'd have to review it. I have it in his file at my office, but I don't remember the specifics.	2
3	Q. What was the result of that investigation?	3 Q. So she did not make a recommendation to you to rehire him?
4	A. If I recall correctly, there was a preponderance of circumstantial evidence.	4 A. Right. She didn't make a recommendation to rehire him or to dismiss him to my recall.
5	There was evidence in which we watched the videotape recordings, and it showed Mr. Lowe confronting a particular student. It showed him hovering over that particular student. It didn't show specifically his hitting or pushing that student up against a wall. But it was in three-second segments, and there were little breaks there. You would see here and you would see there. There were a lot of circumstantial-type evidence with regard to that. I recommended to the superintendent that I could not say with 100 percent certainty that the things Mr. Lowe had been accused of that he had done, but I felt sure	5 Q. She didn't make a recommendation to non-renew him?
6		6 A. No. That was not her -- You mean as a result of this investigation?
7		7 Q. No, sir. Just at the end of the school year --
8		8 A. At the end of the school year, she did make a recommendation. It would have been in the conference notes where she comes down at the end of the year and gives me a review of the performance of each individual who she has recommended for non-renewal. I would have thought she would have made that recommendation. I cannot say with 100 percent certainty that she did as I sit here today.
9		9 Q. Are you saying that it's the standard practice that the principal would make a recommendation
10		10
11		11
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13		13
14		14
15		15
16		16
17		17
18		18
19		19
20		20
21		21
22		22
23		23

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1 of who they wanted to non-renew or to renew;
2 you don't really remember specifically which
3 way she went on that?
4 A. I don't.
5 Q. Do you remember Superintendent Carter having
6 any input as to whether to non-renew or renew
7 Melvin Lowe?
8 A. I don't remember specifically.
9 Q. What conversations did you have with
10 Superintendent Carter about this file, about
11 this situation at Southlawn?
12 A. I don't remember the conversation, but there
13 is a letter in there of my recommendation to
14 him at that particular time. It was general
15 practice if a person were up for any type of
16 disciplinary action or proposed disciplinary
17 action that I would review the specifics of
18 the case with the superintendent, knowing
19 fully well that the final position on whether
20 or not those actions were going to be taken
21 rest with the superintendent. It was my
22 responsibility to give them all the facts as I
23 had ascertained them and then let them make a

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1 recommended him to come back?
2 A. She may very well have a copy of it.
3 Q. Tina Minott?
4 A. Yeah. I can't say for sure. There's a form
5 that they would submit to us as the assistant
6 superintendent and say, well, these are
7 individuals whom I want to have discussions
8 with you relative to non-renewing for next
9 year. And they would itemize those person's
10 names. Whether or not I still have that form
11 on file, I can't say for sure, but I can check
12 for you.
13 Q. What about the position that he held? Someone
14 was hired to replace that position; is that
15 right?
16 A. That he held ...
17 Q. At Southlawn.
18 A. I assume so, yes, sir.
19 Q. So the non-renewal was not because there was a
20 lack of a position?
21 A. I can say that with some degree of certainty,
22 right.
23 Q. Do you know why he was non-renewed?

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1 decision on what actions to take thereafter
2 Q. So you sitting here today can't say who was
3 the person that would have recommended that
4 Mr. Lowe be non-renewed?
5 A. I'm sitting here telling you that the only
6 person who had that authority was the
7 superintendent.
8 Q. Sure, to make the official authority. But
9 we've talked about how obviously often, as
10 Dr. Purcell expressed today, the
11 superintendents follow the recommendations of
12 other individuals. That being the case, do
13 you know of anyone who recommended that Melvin
14 Lowe be non-renewed at the end of the school
15 year where this incident is supposed to have
16 occurred?
17 A. I couldn't tell you with any degree of
18 certainty.
19 Q. Do you know if there would be any other
20 documents, such as -- You said that sometimes
21 principals fill out a form. Do you know
22 if there's a -- would that documentation be
23 kept where Tina Minott may or may not have

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1 A. I don't remember the specifics of it. I have
2 discussions with the superintendents in terms
3 of what is the most prudent course to take
4 with regard to personnel all the time. I
5 couldn't say with any degree of certainty
6 exactly what that conversation might have
7 been.
8 Q. Have you looked for any documentation that you
9 may have regarding that non-renewal?
10 A. No, I haven't.
11 Q. Do you know if Tina Minott asked to reemploy
12 Mr. Lowe in the summer following his
13 non-renewal?
14 A. Not to my recall.
15 Q. Did Melvin Lowe request to be reemployed with
16 the school that summer?
17 A. I think he did. I think he requested for us
18 to reactivate his file which would have given
19 an indication that he wanted to be considered
20 for employment. I don't remember him
21 specifically asking about specific positions
22 thereafter.
23 Q. Do you know -- Who would have made the

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1 decision not to hire him or who would have 2 been involved in the decision not to hire him 3 that summer for the Southlawn position that he 4 previously held?	1 made an EEOC complaint or had ever filed any 2 EEOC lawsuit in the past?
5 A. Assuming that he applied and that she 6 recommended him for that position, then we 7 would have gone through the normal protocol. 8 We would have gone through the protocol of it 9 coming through HR, and with HR taking no 10 exception with it, then recommending it to the 11 superintendent and then the superintendent to 12 the board.	5 A. As I sit here before you now, I cannot say 6 that I'm not aware of it. I was not aware of 7 it until Mr. Lowe filed his complaint and 8 referenced that as one of the reasons of 9 retaliation against him. It was totally 10 unbeknownst to me. I was not aware his mother 11 had ever filed any action against the school 12 district at that time.
13 Q. And would there be a record of that? 14 A. No. Not for a teaching position, no.	11 Q. What about have you and Mr. Carter -- 12 Superintendent Carter ever talked it?
15 Q. You don't have any recollection of either 16 Mr. Lowe asking to be reemployed in his 17 previous position at Southlawn or Tina Minott 18 wanting to reemploy him in that position? 19 A. No.	13 A. No.
20 Q. Do you recall any conversations you would have 21 had with Mr. Lowe in that year after he was 22 non-renewed at Southlawn? 23 A. I do not.	14 Q. Have y'all ever talked about, that you can 15 recall, Mr. Lowe or his mother? 16 A. Well, obviously we talked about Mr. Lowe from 17 the standpoint when I would make a 18 recommendation to him like disciplinary 19 actions, those types of discussions. And I'm 20 sure that I mentioned it to him with regard to 21 when he was assigned to the RISE program, his 22 first assignment with us, when he was cited 23 for paddling kids inappropriately. It was
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1 Q. Do you have any knowledge or information about 2 this incident that's outlined in Exhibit 8 3 other than what we've got before us? Are 4 there any facts or information that you know 5 about that is not in the memos and the 6 letters? 7 A. Not that I'm aware of. 8 MS. CARTER: I was just going to say 9 I think he said he viewed a 10 videotape, and it's not part of 11 Exhibit 8. 12 Q. Right. Other than the videotape? 13 MS. CARTER: I was just going to 14 clarify. 15 A. Not to my knowledge. 16 Q. Who has the videotape? 17 A. I don't know whether there are any -- what the 18 storage capacity -- whether those are erased 19 at the end of each year and they start over or 20 whether they keep those in storage. I don't 21 know enough about it, Bill, to answer with any 22 degree of certainty. 23 Q. Were you ever aware that Mr. Lowe's mother had	1 routine for me to discuss any type of proposed 2 disciplinary action or conference that I was 3 going to have of that magnitude where there 4 may be some job action incurred with the 5 superintendent. 6 Q. What about with regard to the summer before 7 Mr. Lowe returned to Daisy Lawrence? Did you 8 have any conversations with Superintendent 9 Carter then about Mr. Lowe? 10 A. Not to my recall. Not to my recall. 11 Q. Tell me about the -- You said there were two 12 other complaints besides Southlawn. What are 13 the other two complaints? 14 A. Well, Mr. Lowe was assigned as a teacher at an 15 alternative education site that was referred 16 to under the acronym of RISE at the time. 17 There was an administrator assigned there by 18 the name of Mrs. Erodean Jeeter. Complaints 19 came to us relative to Mr. Lowe paddling 20 students without just authority. I talked, if 21 I recall correctly, with Mrs. Jeeter, and I 22 talked with Mr. Lowe concerning these 23 particular allegations. He assured me that it

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1 was not taking place, and that was the
 2 documentation with regard to that counseling.
 3 You cannot paddle unless you are an
 4 administrator or you're an agent of that
 5 administration. Go over the particulars with
 6 him, review the policy.

7 On the next year when he was assigned to
 8 Fitzpatrick Elementary School, I received a
 9 complaint that was from his principal,
 10 Mrs. Vera Thompson, saying that she had
 11 received complaints from parents that he was
 12 rough handling their children in his
 13 classroom. Mrs. Thompson asked that I get
 14 Mr. Lowe down and talk to him concerning this
 15 particular matter, which I did, once again
 16 reminding him of what is proper procedure and
 17 what constitutes physically handling a
 18 particular child and what safeguards you must
 19 follow. Those were the other two situations
 20 that I recall.

21 Q. I did not see anything in the nature of a
 22 written warning or reprimand or anything in
 23 his personnel file regarding the situation

1 after I spoke with him about that particular
 2 issue, but no written documentation.

3 Q. So he didn't receive a reprimand or warning or
 4 anything with regard to the Fitzpatrick?

5 A. No, he did not.

6 Q. How was Mr. Lowe's PEPEs? Do you recall?

7 A. I have not had the opportunity to review

8 them. I don't know.

9 Q. Do the PEPEs go over classroom control,

10 classroom conduct?

11 A. Yes. I think there's an item on the PEPE that
 12 attests to your ability or your demonstrated
 13 ability during that particular observation to
 14 control your classroom, but that's a 55-minute
 15 setting. You record what you see. No
 16 generalities can be drawn on that PEPE
 17 instrument.

18 Q. Right. You have a certain session you're
 19 monitoring to evaluate them through the PEPE
 20 process, and you do that at different
 21 intervals during the school year, right?

22 A. That's correct.

23 Q. Some of those are announced and some of them

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1 with Jeeter and the RISE program. Do you
 2 recall if there was anything of that nature?

3 A. I don't think that there was any written
 4 reprimand in that case. It sufficed for me to
 5 have the conversation with him and tell him
 6 basically what is acceptable and what is not
 7 acceptable. If you are paddling children
 8 without proper authority, cease and desist. I
 9 am not, Mr. Barker, paddling children. I had
 10 no proof other than the allegations on behalf
 11 of the complaining parent.

12 Q. Was there any documentation of your meeting
 13 with him or your investigation?

14 A. There may be a calendar indication if I were
 15 to pull out a calendar back that far, if I
 16 have a calendar back that far, but no other
 17 documentation.

18 Q. What about with Fitzpatrick? Is there any
 19 written reprimand there?

20 A. I don't think that there's any written
 21 reprimand. I would have documented it in his
 22 personnel file. There was just dialogue back
 23 and forth between his principal and myself

1 are unannounced, right?

2 A. That's true.

3 Q. And then obviously if you want to take any
 4 other kind of discipline, you can always send
 5 somebody a written reprimand or a written
 6 warning or suspend them as happened with
 7 Southlawn. There's other things you can do as
 8 well; is that right?

9 A. That's true. That's available to us on the
 10 central office level, not the principal's
 11 level.

12 Q. Sure.

13 (Plaintiff's Exhibit 9 marked for
 14 identification.)

15 Q. Let me show you what I'm going to mark as a
 16 collective exhibit, Exhibit 9, and ask you if
 17 those are Mr. Lowe's PEPE evaluations. Those
 18 would just be the years with Jeeter and
 19 Thompson.

20 A. They appear to be for Mrs. Thompson at
 21 Fitzpatrick and Mrs. Erodean Jeeter at the
 22 RISE program.

23 Q. And he made scores that were passing scores at

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1 those two places? He made passing scores?	1 guess of the employee who got the position.
2 A. Well, it depends on what you mean by passing.	2 A. Yes, sir.
3 They seem to have been fairly good feedback.	3 Q. Will you keep the employee's resume, anything
4 There were some 2s. There were some 3s. 2s	4 that shows the qualifications of that
5 are areas that need improvement. There are	5 particular employee, who got that position?
6 more 3s than there are 2s on most of the	6 A. No. By and large, if it's an administrative
7 ones. However, each one that I saw had some	7 position, we ask that the applicants bring a
8 areas that were 2s and some that were 3s.	8 resume with them to the interview process. If
9 Q. But don't you have a cumulative score that	9 it's a teaching position or something of that
10 you've got to exceed a 20?	10 nature, then there would be no resume
11 A. I think you do have to make a score of 21 or	11 required. We basically check out minimum
12 above to say that you have successfully gone	12 credentials to make sure that they are
13 through that evaluation process.	13 certified, that they meet the posted
14 Q. And he met those scores, didn't he?	14 qualifications for that particular position.
15 A. Yes. I think so in each case. Let me	15 But we don't require a resume for them.
16 double-check again. I only see one instrument	16 Q. They would have an application, though,
17 where they were totaling, and on that	17 correct?
18 particular instrument he made 23 which is	18 A. They would have to have an application on
19 above that 21 minimum passing score.	19 file, yes.
20 Q. Do you recall -- I'll try to take it somewhat	20 Q. And that would detail their different
21 chronological. Let's go up to the end of	21 qualifications?
22 Southlawn.	22 A. Yes.
23 Other than what you told me, do you	23 (Brief off-the-record discussion.)
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1 remember any other conversations with Mr. Lowe	1 A. Let me clarify that, Bill. If they are a
2 up to the point of he's non-renewed at	2 current employee of the school district and
3 Southlawn, other than what you've already told	3 they apply for a particular position, if it is
4 me?	4 an administrative-type position, a letter of
5 A. Not to my recall, no.	5 intent is required by my office. If it is a
6 Q. Do you remember any other conversations about	6 teaching position, something that's on a
7 Mr. Lowe up to that point?	7 parallel with the position that they are on,
8 A. To anyone in general?	8 they are free to interview with the principals
9 Q. Sure.	9 for those particular positions without having
10 A. As I said before, I would have probably had a	10 a letter of intent. If you are a nine-month
11 conversation with the superintendent when it	11 teacher and there's another position that's on
12 came time to review individuals for	12 a nine-month pay schedule and you know that
13 non-renewal, but not about Mr. Lowe	13 there's a vacancy at McKee Junior High School,
14 exclusively but about the individuals who were	14 it's within your right to contact McKee Junior
15 being recommended for non-renewal.	15 High School and say, well, I'm interested in
16 Q. Do you remember anything about that particular	16 that particular position. They do not have to
17 conversation?	17 submit a letter of interest. If there's any
18 A. No, I do not.	18 type of gain going from a nine-month or
19 Q. Now, we've been given a number of documents	19 ten-month, an increase in pay, then they must
20 from Mr. Lowe's -- where he applied for some	20 submit a letter to us indicating they are
21 different positions with the school system.	21 interested in that position. We cannot make
22 Those documents have some announcements, and	22 that assumption.
23 then behind them they'll have a certificate I	23 Q. If a person moves from, say, a nine-month to a

Page 101	Page 103
1 ten-month position, is that considered to be a 2 promotion? 3 A. It is because there's a pay increase 4 associated with it. 5 Q. Does that mean they have to -- If they are 6 going to move from that position to a higher 7 one, does that position have to be advertised? 8 A. That position has to be advertised, right. 9 Q. Let's move into the fall of 2003. Do you 10 recall any conversations with Mr. Lowe or 11 about Mr. Lowe during that time? 12 A. Fall of 2003? This is the time that he was 13 hired for the position at Daisy Lawrence; is 14 that correct? 15 Q. Right. 16 A. No, other than the fact of clarifying the 17 position that he was applying for. When 18 Mr. Lowe came down and approached me with 19 regard to that particular position, of course 20 I told him that he was under contract with 21 Bullock County and that I would have to touch 22 bases with them because we have a gentleman's 23 agreement that we don't raid each other for	1 that's what he told him, that he was still 2 interested in that particular position. 3 And I had the same type conversation with 4 Mr. Lowe, that we had a teacher/tutor 5 position. Later on that very same year, 6 Mr. Lowe sought by way of e-mail clarification 7 as to what his duties and responsibilities 8 would be leading into the summer. I reminded 9 him again that he was on a nine-month 10 teacher/tutor position, that he had no 11 responsibilities beyond the 182-day teacher 12 calendar so that there would be no 13 misunderstanding of it. 14 Q. What would a reading coach do that a 15 teacher/tutor would not? 16 A. Reading coaches had responsibilities for some 17 training during the summer. If they were on 18 the nine-month reading coach position, if they 19 had no contract beyond nine months, then there 20 must be some understanding between that person 21 and the program that's going to work with them 22 as to how they were going to be paid, whether 23 they are going to be paid some type of
talent.	
Mr. Lowe went over to talk with -- After getting assurances from Bullock County that it was not going to be tampering, then we got back in touch with Dr. Owens, and he went over to talk with Dr. Owens about that particular position, according to the conversation that Dr. Owens had with me. I cannot say that he did this. I'm going strictly by Dr. Owens' words to me. Dr. Owens' words to me were along the line that Mr. Lowe inquired about a reading coach position and that he told him that he did not have a reading coach position available, that he had a teacher/tutor position available. And before he called me back, he said that he had had the discussions with Mr. Lowe that he was interested in the teacher/tutor position, that he told him explicitly that he did not have a reading coach position and asked him if he was still interested, and he said that he was. And I told him to make sure that he had that clarification. And according to Dr. Owens,	
	supplemental contract for those particular days. If they were on a ten-month reading coach position, there was already an allocation. Their year extended beyond the regular school year, beyond the 182 days, and began before the 182 days so that that training could be taken care of.
	Q. I was really more interested in if I was to look at a reading coach and a teacher/tutor, what would they be doing that would tell me this is a reading coach and this is a teacher/tutor?
	MS. CARTER: Different than what he already explained today?
	MR. PATTY: Well, I haven't quite heard it other than nine-month and ten-month.
	MS. CARTER: He --
	MR. PATTY: Let him explain it.
	MS. CARTER: I don't care, but he told us all about that earlier.
	A. The primary difference, Bill, once again, was the teacher/tutor was responsible for working

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1 with students. You were to be diagnostic from 2 the standpoint of finding what students were 3 struggling with particular reading programs or 4 math programs. Teacher/tutors were not 5 exclusively reading. They could be math 6 teacher/tutors. You would pull those students 7 out and work with them on an individual basis 8 to try to get them to move from point A to 9 point B. Nothing in terms of any clinical 10 analysis of what teachers were doing. The 11 reading coaches were supposed to diagnose 12 deficiencies as they related to the teachers 13 themselves and work with them in improving 14 their skill level so that everybody is 15 teaching the same thing basically and 16 everybody is being as effective as they 17 possibly can. The focus was different. One 18 was on students and the other was on teachers.	1 on a tangent in a direction. 2 Q. But you never said anything to him that 3 Superintendent Carter was blocking anything or 4 had anything -- 5 A. No, sir. I did not fall off the turnip truck 6 this morning. I assure you. 7 Q. Did Superintendent Carter ever express any 8 hostility toward Melvin Lowe to you? 9 A. No, he did not. 10 Q. Or any give you any kind of indication that he 11 did not want to employ Melvin Lowe, that he 12 had reservations about Melvin Lowe? 13 A. No, he did not. 14 Q. Before Melvin Lowe was brought in as a reading 15 coach, do you remember any conversations with 16 Mr. Carter about it? 17 A. No. 18 MS. CARTER: Object to form. 19 A. No, I do not. I remember none. 20 Q. How about afterwards? Do you remember any 21 conversations with Superintendent Carter after 22 Melvin Lowe was hired at Daisy Lawrence? 23 A. No. I imagine if Mr. Carter was on board when
1 that's what Mr. Carter said to you? 2 A. No, I did not. 3 Q. Did you ever tell Mr. Lowe, you know what 4 Clinton Carter thinks about you? 5 A. No, I did not. 6 Q. Or indicate to him or his mother that Clinton 7 Carter was blocking him getting certain 8 positions in the school? 9 A. No, I did not. Mr. Carter had the ultimate 10 authority to make the recommendation as to 11 whether or not Mr. Lowe received employment in 12 the school district. It would be awfully 13 supposititious on my behalf to make a statement 14 such as that. On the other hand, when 15 Mr. Lowe would come to my office, he would 16 invariably want to go off on a tangent in 17 terms of what this person is not doing and 18 what this person is not doing; but, 19 Mr. Barker, I know that you are all right by 20 me, and I know that you're doing all that you 21 can to get me this job, but I know that 22 so-and-so doesn't want me to have it. It was 23 a common ploy on his behalf to try to go off	1 the EEOC complaint was filed that I made him 2 aware of it, of the fact that we had the EEOC 3 complaint from Mr. Lowe, as was routine with 4 me with the sitting superintendent at that 5 particular time, if I recall. That complaint 6 arrived before Mr. Carter abdicated the 7 position and before Dr. Purcell came aboard. 8 Q. Do you know from personal knowledge of what 9 kind of duties Melvin Lowe was performing at 10 Daisy Lawrence? 11 A. I do not. I cannot honestly say what kind of 12 duties he was performing because Mr. Lowe in 13 conversations with me would say, well -- later 14 on, well, Dr. Owens had me doing this and he 15 had me doing that, and he knew that I was 16 saving his bacon as far as the requirements of 17 this program and that program. But those were 18 after-the-fact observations by Mr. Lowe in 19 terms of what he was required to do there at 20 Daisy Lawrence. Since we had had the explicit 21 conversation what his duties and 22 responsibilities were as a teacher/tutor when 23 he was sent there, I assumed that Dr. Owens

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1 was holding him accountable with regard to 2 performing the duties and responsibilities 3 associated with that position. 4 (Plaintiff's Exhibit 10 marked for 5 identification.) 6 Q. Can you identify this document for me? 7 A. This seems to be a rehire document for Melvin 8 Lowe for 11/13/03. This seems to be the 9 rehire document when he was sent to Daisy 10 Lawrence. 11 Q. What's the date on that again? I'm sorry. 12 A. I can't make it out unequivocally. It's 13 10/13/03 or 11/13. It says effective date. 14 It may be 10. 15 Q. What position does that say? 16 A. It says a reading tutor. 17 Q. Let me show you what is marked as Exhibit 11. 18 Can you identify that document? 19 (Plaintiff's Exhibit 11 marked for 20 identification.) 21 A. Salary -- This seems to be a salary step 22 correction, and it says teacher at Daisy 23 Lawrence, Melvin Lowe. It seems to be placing	1 discrepancy here was in regard to whether he 2 should have been on step 3, which establishes 3 your pay level and have four years experience, 4 or step 3 and have five years experience, 5 which would have meant the next year would 6 have affected whether or not he went to that 7 sixth year and whether subsequently he would 8 have gotten a pay raise. 9 Q. Now, it listed him -- the first one lists as a 10 teacher/tutor and the second one lists as a 11 teacher. 12 A. Right. 13 Q. Why was that changed? 14 A. On the first one, all of that information was 15 filled in by Mr. Lowe himself, it seems as 16 though, from the writing. We generally would 17 have them to fill out the top of the sheet, 18 and then we would fill out the bottom of the 19 sheet. Unless something seems out of the 20 ordinary, then we're not going to catch it if 21 they misname themselves or something of that 22 nature. But that pronouncement with regard to 23 being a reading tutor was Mr. Lowe himself.
1 him on step three, experience credit four, 2 when he inadvertently must have been -- if 3 this is a follow-up to this other document had 4 experience credit 5, and this says experience 5 credit 4. 6 Q. So it's a reduction in pay? 7 A. No, it would not have resulted in any 8 reduction in pay. Basically what happens is 9 this: When a person comes in and fills out 10 the paperwork, they fill out their experience 11 base on one of the sheets that they submit to 12 us. The administrator in that particular 13 office would take them at their particular 14 word, realizing that they may genuinely may 15 make a mistake or inadvertently make a mistake 16 and come back and make the corrections and get 17 it to payroll in a timely enough manner so 18 that no mispayment is done. 19 In this particular case, it would not have 20 involved a reduction in pay because you go on 21 three-year increments. You stay on the same 22 pay level until you get to year three and then 23 until you get to year six. So the only	1 Q. So y'all changed it to a teacher? 2 A. Huh? 3 Q. Y'all changed it to a teacher? 4 A. Yeah. He was a teacher/tutor, which is still 5 technically a teacher. 6 Q. And that's different from a reading tutor? 7 A. Right. Exactly. He was a teacher/tutor. If 8 you recall, I said earlier teacher/tutor does 9 not make you work exclusively with reading. 10 You may be given assignments within reading. 11 You may be given assignments within 12 mathematics. You're just designated to pull 13 students out and work with them on an 14 individual basis. 15 Q. Why wouldn't you call a reading tutor a 16 teacher? 17 A. A reading tutor? 18 Q. If a teacher/tutor is a teacher, why isn't a 19 reading tutor a teacher? 20 A. "Teacher" seems to generally infer to me that 21 you're on that nine-month teacher salary 22 schedule. Now, when this was filled out, this 23 was filled out -- if you'll notice, it didn't

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1 require Mr. Lowe's signature or anything, so 2 this was filled out probably exclusively by my 3 office, by me seemingly, by the person who 4 signed it. It says, see attached. And it 5 just goes go and charges and places him on the 6 right step. But the difference between the 7 two is what I would call him is what we hired 8 him as, and what he would call himself is what 9 he perceived himself as being, I guess.	1 Q. Anybody. 2 A. Not to my knowledge. 3 Q. What was the reason that -- or if you recall 4 that there was an attempt of a non-renewal of 5 his teaching position at the end of 2004? A. Our alternative education program was one that was seemingly in continual transition. At the end of each calendar year -- school year, there was always a reassessment with regard to the effectiveness of that program. It was very commonplace that there would be an overhaul -- a programmatic overhaul with that program at the end of a given year going into another year. If you were a non-tenured personnel assigned to that program, in order to facilitate the programmatic overhaul, those individuals would be routinely non-renewed to allow that process to take place. So Mr. Lowe, along with -- I think at that particular time there was one other person who was non-tenured -- were included for non-renewal, sent letters. Everything was
10 Q. So he was hired as a teacher/tutor which is 11 treated as a teacher, not a reading tutor? 12 A. Yeah. The technical name for a teacher/tutor, 13 a reading tutor or math tutor is 14 teacher/tutor, and they are on the exact same 15 salary schedule as a 182-day teacher. 16 Q. Is that how it's advertised? 17 A. Yes, sir. 18 Q. As teacher/tutor? 19 A. As teacher/tutor, yes. 20 (Plaintiff's Exhibit 12 marked for 21 identification.) 22 Q. Let me show you Exhibit 12 and ask you if you 23 can identify that document for me.	16 17 18 19 20 21 22 23
Page 114	Page 116
1 A. Melvin Lowe, reading coach, Daisy Lawrence, it 2 seems to be, and that's Carolyn Hicks, 3 5/13/04. That seems to be non-renewal, yes. 4 Q. What would -- That particular form would have 5 been filled out by Carolyn Hicks? 6 A. Most likely. 7 Q. Signed by her; is that right? 8 A. That's correct. 9 Q. Mr. Lowe's signature is not on that document? 10 A. That's correct. 11 Q. Ms. Hicks works in your department? 12 A. That's correct. 13 Q. And she lists as his job reading coach? 14 A. She seemingly does. 15 Q. And this was when y'all attempted to non-renew 16 Mr. Lowe at the end of the 2003-2004 school 17 year? 18 A. Yes, that seems to be that paperwork. 19 Q. Up until that point of the non-renewal in 20 2003-2004, had you had any conversations other 21 than what you've told me about with Mr. Lowe 22 or about Mr. Lowe? 23 A. Conversations with whom?	1 done according to the way that it should have 2 been done except that it was not put in the 3 board minutes to confirm that they had been 4 non-renewed to facilitate this process. 5 Once we realized that that particular 6 error had been made, these individuals were 7 called back in because the deadline had come 8 and gone in order to notify them by the end of 9 the school year that their particular position 10 would be retained. Although it might be 11 contrary to our reorganization and 12 restructuring efforts, their position would be 13 retained because they were not notified -- 14 They were notified in a timely manner, but the 15 board had not acted in a timely manner because 16 we had not presented it. And that's what 17 Mr. Lowe was told, and that's what the other 18 individual was told and that he was entitled 19 to the position he held the previous year. Q. And so Mr. Lowe returned to Daisy Lawrence the next year? A. Yes. After he milked it for all that it was worth. Mr. Lowe came in that summer, and we

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had a discussion that he had that particular position. I need to get your name back on a contract saying that you are still employed there at that school. Mr. Lowe said at that particular point, I would like to wait and see if I get another position. Mr. Lowe, I'm telling you that you are entitled to a position; at least get your name on the line so that that particular position cannot be filled by anybody else. He kept telling me, well, let's wait and see; let's wait and see; let's wait and see and see if I can get something else. Nothing would preclude you from applying for other positions, Mr. Lowe, if you get your name back on the position that you held on last year.

Right up to the very end of the summer, he finally came in. I guess he recognized at that particular point that his opportunities were growing fewer with regard to being placed elsewhere, and then he consented to being reassigned to that same position.

Q. Do you remember any other conversations you

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- 1 A. I'd have to check his credentials to see at what point he became certified in administration. I know at some point he did, and he began to interview for those types of positions.
- 2 Q. What would he need I guess is what I should have asked you for that type of position?
- 3 A. Administrative certification.
- 4 Q. Administrative certification?
- 5 A. Yes.
- 6 Q. Is it appropriate for someone to take an administrative position like that before obtaining their certification in administration?
- 7 A. No, it's not.
- 8 Q. Is it the practice of the school system or the policy of the school system that a person have the required certification prior to taking a position?
- 9 A. If we are the ones who are applying the rules. We make every effort to make sure that the person is certified before placing them in that particular position, yes.

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had with Mr. Lowe other than what you've talked about just now?

A. No, I don't remember. I did tell him that I was disappointed in the fact that he would not facilitate that process of getting his name on the line with reassurances that he could apply for any other positions that came open. But it was his right to do so, so I went along with it.

Q. Do you recall talking to anyone about Mr. Lowe during the summer of 2004?

A. No, I do not.

Q. Do you remember a position coming open at McKee that Mr. Lowe applied for where Principal Abrams was the principal that summer?

A. No, I do not.

Q. Do you remember Principal Abrams recommending Lowe for this position? An administrative assistant position, I believe.

A. No, I do not.

Q. Would Mr. Lowe have the certification and education for that kind of position?

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- 1 Q. So if certification is coming in a short period of time, they would still be disqualified from that position?
- 2 A. If it is a full-hire position, right, that's going to obligate the school district for a full year or something with any inkling that it's going to be a full year.
- 3 Q. What about a summer position?
- 4 A. Summer positions were different. We made every effort to ensure in placing a person for summer that they had proper credentials; however, it didn't obligate the school district in some cases. For example, with our ARFI program, one summer we had -- the State of Alabama had a program that was housed at Thelma Morris School. And they were hiring administrators. They were hiring teachers inside the school district, outside of the school district for that particular program. We tried to take all of the safeguards -- it was being done in such a haste in trying to get everybody in place -- take all of the safeguards to make sure that whoever manned

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1	those particular positions had the credentials	1	Mr. Lowe for any positions at his school?
2	that were necessary in order to man them.	2	A. No, he did not. The only -- Mr. Abrams
3	We did have one young lady who supervised	3	approached me to my recall. I was at Capitol
4	the program at Thelma Morris who at the time	4	Inn having lunch. Mr. Abrams and another
5	that she supervised the program had not	5	principal came out of Capitol Inn. He stopped
6	received her full certification. Her	6	me and asked me, Mr. Barker, Mr. Lowe has been
7	certification was not forthcoming until the	7	by my school to inquire about a special
8	end of August, but it was a matter that she	8	education position that I have available; is
9	was negotiating with Thelma Morris and the	9	he a viable candidate for that position. I
10	State. And we didn't get the overview of that	10	told him in no uncertain terms as long as he
11	until it was too late. That's the only	11	meets the certification requirements for that
12	situation I can ever recall. There may have	12	position, he is a viable candidate and he can
13	been some others at some point, but that's the	13	be selected and recommended for that
14	only one I'm ever aware of where we had a	14	position. I told him I could not talk off the
15	person who was in a particular position for	15	cuff and determine whether or not he met those
16	which they were not fully certified.	16	certification requirements, that I would check
17	Q. Would Mr. Lowe have the certification	17	when I got back to school and that I would --
18	education to be SIA?	18	back to the office and that I would give him a
19	A. If he had the administrative certificate at	19	call.
20	that particular time, yes, he would have.	20	I subsequently checked. I subsequently
21	Q. How about an assistant principal?	21	inquired of Mr. Lowe if he had certification
22	A. Assistant principal, yes, he would.	22	along the lines of special education.
23	Q. And then we've already talked about reading	23	Mr. Lowe gave me a bunch of fast talk saying
	Page 122		Page 124
1	coach, right? He has the certification and	1	that I have taken these courses and that these
2	the education for that is that right?	2	courses meet the requirements. I can get an
3	A. Yes. As long as he has certification in	3	emergency certification. Mr. Lowe, show me
4	elementary education or reading -- and/or	4	proof that you have these courses that you say
5	reading.	5	that you've taken. Mr. Lowe presents to me a
6	Q. And your testimony is you don't recall	6	transcript that does not have a single special
7	Mr. Abrams approaching you about a position at	7	education heading on it. I'm told all the
8	his school in the summer or late summer of	8	time in my position that I qualify for this.
9	2004?	9	I'm told by applicants all the time that I can
10	A. That's my position.	10	teach math. I review their transcripts, and
11	Q. Do you know that was one of the things that	11	they've got one single math course on it. Yet
12	Mr. Lowe complained about in his EEOC	12	they can teach math. Desire alone does not
13	complaint was not being hired for that	13	qualify you to teach a particular position.
14	position?	14	To this date Mr. Lowe has not shown me any
15	A. I don't recall Mr. Abrams making a	15	special education courses that he has taken by
16	recommendation for Mr. Lowe, no.	16	way of a transcript that would qualify him to
17	Q. Did you ever investigate to see, with	17	teach special education. Sure he's given me a
18	Mr. Abrams, if he made that recommendation to	18	lot of dialogue that says this will count for
19	somebody without your knowledge?	19	that and this will count for that, but it's
20	A. I asked Mr. Abrams if he made the	20	his responsibility, not mine, to go to some
21	recommendation of Mr. Lowe. He told me that	21	state department and say that these courses
22	he did not.	22	are substitutable for these particular courses
23	Q. Did he ever indicate to you he wanted to hire	23	and I can get certified in this particular

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1 area. Until he shows me that, I'm not going
 2 to step out on a line and allow him to assume
 3 a position that I have high suspicion that he
 4 is not certified for.

5 Q. Does the school system ever obtain emergency
 6 certification for employees who don't have
 7 their full certification in an area?

8 A. Yes, we do.

9 Q. In the summer of 2005, did you obtain any
 10 emergency certification for teachers?

11 A. Yes, I did.

12 Q. Can you name any of those?

13 A. Can't name them specifically, but I can give
 14 you the circumstances.

15 Q. Let me ask you this before you give me the
 16 circumstances. Did they have teaching
 17 certificates before you hired them with an
 18 emergency certificate?

19 A. Not necessarily a teaching certificate, but
 20 they would have a degree.

21 Q. Does the school hire people who don't have
 22 education degrees but obtained emergency
 23 teaching certificates while they work for a

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1 fifth-year master's program?

2 A. We do.

3 Q. How many people do you think got emergency
 4 teaching certificates this past year?

5 A. I can tell you exactly. We have 53 people who
 6 are on emergency certificates for various
 7 reasons, the most common reason of which is
 8 that they apply with the school district.
 9 They cannot get accepted into an alternative
 10 education program because of timing or because
 11 of whatever reason they might have, but they
 12 will have a degree in the related area.

13 For example, a person might very well have
 14 a degree in social science but will not have
 15 the certification in social science. They
 16 have the necessary hours. They just cannot
 17 get into that program. We get them by for the
 18 remainder of that year with an emergency
 19 certification. They apply for the alternative
 20 certification when it is timely to do so, but
 21 they have the coursework requirement.

22 And special education, since that's what
 23 we're referring to, we had a requirement

32 (Pages 125 to 128)

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1 wherein you had to have documentation of at
 2 least 18 earned hours in special education
 3 before you're considered for alternative
 4 certification, at least 18 hours. Mr. Lowe
 5 did not present any evidence of any hours to
 6 me. He had the desire to teach special
 7 education, and he possibly could have done so
 8 but he didn't have the credentials to do it,
 9 at least he didn't present to me his
 10 credentials to do it.

11 Q. Do you remember if the school applied for
 12 those emergency certificates or did the
 13 individual go get them and bring them to the
 14 school?

15 A. No. We apply through my office. You have to
 16 submit -- fill out the paperwork through my
 17 office, and it has to be submitted to the
 18 State Department of Education. We look like
 19 fools if we submit something and we know that
 20 that person does not have the coursework in
 21 order to receive that certificate. We have to
 22 review it ourselves and say, well, this person
 23 has the adequate coursework. It is not a

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1 timely manner for them to get into an
 2 alternative program, but we're going to get
 3 them by. The State is not going to honor it
 4 if you just arbitrarily send in a person for a
 5 an emergency certification based upon desire.
 6 You can't do that.

7 Q. Did you check with anyone at the State
 8 Department of Education to see if Mr. Lowe
 9 would qualify -- his courses would qualify?

10 A. For special education?

11 Q. Emergency certificate.

12 A. No, I didn't, because the first rule of thumb
 13 there is to have the proper departmental
 14 indication by the courses that you take. When
 15 you get a person's transcript, Bill, it's
 16 going to say, SPE or SP, special education,
 17 SPED. Every course that is considered as
 18 special education is going to have some type
 19 of indication that it is a special education
 20 course.

21 Am I sitting here saying that Mr. Lowe
 22 hasn't had any courses that would qualify for
 23 that? No, I'm not. I'm sitting here saying

	Page 129	Page 131
1	that Mr. Lowe has never presented to me any evidence that any of the courses that he has taken qualify for special education, which is his responsibility.	1 he is certified in special education. 2 Q. Did Mr. -- 3 A. It may have been before, but I think it was after.
5	Q. Were you aware that his work and his school work on his doctorate degree was in special education administration?	5 Q. Did Mr. Sikes indicate that he wanted to hire Mr. Lowe? 6 A. No. He just told me he had a couple of vacancies -- I think he had two in special education -- and that he was looking. And he and I both were desperate for certified applicants at that particular time because there was a shortage for special education teachers the entire summer going into the school year after the school year had started. So there would have been absolutely no reason to deny him the right to hire him if we could get him certified. It would have been a glorious moment in my cap to find someone whom I could get certified to place in those positions. We couldn't do it.
8	A. I'm aware that I had that conversation with him, but I'm not aware of it by way of a transcript.	7 Q. Did you ever say anything discouraging to Abrams or Sikes about Mr. Lowe? 8 A. No.
11	Q. Is that the reason Mr. Lowe was not hired for the job that Mr. Abrams had in special ed?	9
13	A. We never got to the recommendation stage because when I called him back, I said according to my research I cannot document Mr. Lowe has had the special education courses that he discussed with you and that he ultimately discussed with me.	10
16	Q. Did Abrams say, I want to hire Mr. Lowe, or did he put it just like, what do you know about Mr. Lowe? How did he say that to you?	11
19	A. Basically what he asked of me was, if I'm entertaining Mr. Lowe for a special education	12
22		13
23		14
	Page 130	Page 132
1	position at my school, does he meet minimum qualifications.	1 Q. Nothing disparaging about him? 2 A. No.
3	Q. That's the first time Abrams ever approached you about a job for Mr. Lowe?	3 Q. Nothing to intimate that you didn't think he was a good candidate for them to hire?
5	A. First time.	4 A. Absolutely not. The only subsequent discussion that I had with Mr. Sikes was -- He said, Mr. Barker, who is this man; he is on my doorsteps every day; you have told me that he does not meet the qualifications for special education. I just said he is an aspiring teacher. He's a teacher without a job, and he's looking for a job, to kind of appease the process with him.
6	Q. Or as you're here as a representative of the school, as far as the school system knows, that's the first time Mr. Abrams approached the school system about hiring Mr. Lowe?	5 Q. Did Sikes talk to you about Lowe teaching science or English or any other courses? 6 A. Not to my knowledge. Special ed is all we talked about.
10	A. It is.	7 Q. Did he talk to you about Lowe applying for an assistant principal or administrative assistant's position? 8 A. Not to my knowledge.
11	Q. Now, what about Mr. Sikes?	9 Q. Did you ever become aware of Ms. Starks that wanted to hire Mr. Lowe?
12	A. Mr. Sikes had a similar conversation with me. It was not -- I don't want you to think I'm at every buffet in town, but he called me up and asked me basically does Mr. Lowe -- I have a vacancy in special education; Mr. Lowe has been on my doorsteps with regard to that position; does he meet the posted qualifications for special education.	10
13	I had already done the research at that particular time because I think that was subsequent to Mr. Abrams asking me. And I told him I do not have any documentation that	11
14		12
15		13
16		14
17		15
18		16
19		17
20		18
21		19
22		20
23		21

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- 1 A. I know Ms. Starks. I'm not aware that she
2 wanted to hire Mr. Lowe.
3 Q. She never expressed to you any desire to hire
4 him?
5 A. Ms. Starks, if I recall correctly, recommended
6 three individuals consistent with the pattern
7 that I outlined to you earlier for her
8 administrative assistant's position. Among
9 those three individuals was Mr. Marvin Lowe,
10 but not Mr. Melvin Lowe.
11 Q. And who was chosen for the position?
12 A. A science teacher, black male, from a middle
13 school magnet school in the district, Floyd
14 Middle Magnet School.
15 Q. Were you aware of a position that was filled
16 by a lady named Karen Vann that Mr. Lowe
17 included in his concerns in his EEOC charge?
18 A. I know Karen Vann and the position that she
19 ultimately filled with the school district.
20 Q. Was that position advertised?
21 A. Yes, it was.
22 Q. And she's a white female?
23 A. That's correct.

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- 1 was no need to advertise Karen Vann's position
2 because she was a lateral transfer?
3 A. No, I do not.
4 Q. Was that true?
5 A. I don't remember saying it. I don't know if
6 it was true.
7 Q. No. No. Was she a lateral transfer?
8 A. I don't think so. Unless she had a
9 twelve-month position prior to that. I would
10 have to research it. I don't know.
11 Q. And then Denitta Easterling, do you recall her
12 serving as summer school principal for the
13 summer reading camp at TS Morris Elementary?
14 A. She's the person whom I referenced earlier.
15 She was one who fell between the cracks
16 wherein she supervised a summer program for
17 the State of Alabama housed at Thelma Morris.
18 And I come to find out later on that after she
19 had done this -- and that's spilled milk at
20 that particular point -- that she didn't
21 actually receive her certification until the
22 end of that summer.
23 Q. Was there a screening process that she would

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- 1 Q. Now, would that advertisement be one of those
2 general ones or will it say it specific to
3 that school that she advertised for?
4 A. I don't know, Bill. I would have to go back
5 and check on the timing of her hiring and
6 research the posted notice just prior to
7 that. I do know that she was selected. The
8 reason I remember Karen is because she was one
9 of the earlier-on system reading coaches that
10 were chosen. This was after Mike Looney and
11 Teresa Nichols were in position. Then they
12 collaborated to select Teresa Jackson. And
13 then after Teresa Jackson was brought on,
14 Connie Mizell was selected by that interview
15 committee. And then Connie Mizell -- after
16 she was brought on, Karen Vann was brought
17 on. All of these individuals were brought
18 on -- Connie Mizell was brought on as a
19 specialist, and she probably participated in
20 the screening process with regard to Karen
21 Vann. But I cannot say with certainty without
22 going and establishing that chronology.
23 Q. Do you remember telling Mr. Lowe that there

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- 1 have put down on her application before she
2 got that position so y'all would be able to
3 know what kind of certification she had?
4 A. Under ideal situations, yes. She would --
5 Everything would have been registered with
6 Montgomery Public Schools. We would have done
7 all the background work to make sure those
8 individuals were properly certified. As I
9 said before, that kind of fell between the
10 crack because there was negotiation going with
11 the state department in terms of who was going
12 to head up that particular school that
13 summer. And some individuals were being hired
14 outside the school district, teachers. Some
15 of them were inside the school district, and
16 she fell between the cracks. She convinced
17 somebody that she had her certification at
18 that time.
19 Q. Was she allowed during that summer to
20 interview for administrative assistant
21 positions?
22 A. Now, that I cannot say. I don't remember.
23 Q. What about other administrative positions? Do

Page 137		Page 139
1	you know if she was able to interview then?	1 EEOC complaint?
2 A.	I don't know. I do know that it was very close in proximity to the time that she actually served. She probably began to serve as that summer school supplemental contract with the state department in June. In August, two months later, she had completed the certification, and she was ultimately hired for that fall as an administrative assistant with our school district, but she had the certification at that particular time. Now, she did not have it at the time she oversaw that program for the state.	2 A. I don't think so.
3		3 Q. And what was the reason that his leave was denied?
4		4 A. Mr. Lowe is not lacking in ambition at all. He is fully confident in his abilities and the things that he wants to do, whether for the school district, within the school district. He submitted a detached duty request to represent the school district in a conference -- I think if I recall in California -- related to our reading program.
5		5 Well, we had all kind of ambassadors for our reading program that were further up the chain that Mr. Lowe. Mr. Lowe was a teacher/tutor. He had no official capacity, even as a reading coach, within the school district. And we had all kind of individuals who had the proper credentials. So I inquired of his -- the person who would have been giving that authority, Mr. Looney. I said, Mr. Looney, I have a request from Mr. Lowe to go out and represent the school district and
6		6
7		7
8		8
9		9
10		10
11		11
12		12
13		13
14 Q.	Would she have been interviewing for those jobs that she ultimately received in the fall -- would she have been interviewing for those during the summer?	14
15		15
16		16
17		17
18 A.	It's possible. I cannot say, but it's possible.	18
19		19
20 Q.	Going back to Abrams in '04, did you ever tell Mr. Abrams that he had to hire a woman?	20
21		21
22 A.	No, sir.	22
23 Q.	Have you told anybody for the positions that	23
Page 138		
1	Melvin Lowe has applied for that they had to hire a woman?	1 make a presentation about our reading program in a workshop-type setting; did you authorize this.
2		2
3 A.	No, sir.	3
4 Q.	You would not say that?	4
5 A.	No.	5
6 Q.	That would be inappropriate, would it not?	6
7 A.	It would be, definitely.	7
8 Q.	That you had to hire a woman --	8
9 A.	No.	9
10 Q.	-- as opposed to -- based on their gender?	10
11 A.	No, definitely not.	11
12 Q.	During the '04-'05 years, did you have any conversations regarding Mr. Lowe?	12
13		13
14 A.	'04-'05?	14
15 Q.	Second year at Daisy Lawrence.	15
16 A.	No.	16
17 Q.	Did you have any conversations with Mr. Lowe during that time?	17
18		18
19 A.	I don't recall any other than, you know, maybe during the time when he was -- Well, I just don't recall any.	19
20		20
21		21
22 Q.	When his leave requests were denied, were those -- was that after you were aware of his	22
23		23
Page 140		
1		make a presentation about our reading program in a workshop-type setting; did you authorize this.
2		
3		
4		Mr. Looney looked at me and gave me a facetious laugh. He said no, I did not authorize this. I turned down that recommendation based upon my conversation with Mr. Looney. I don't know what anybody else told Melvin Lowe. I know that I had that conversation with Mr. Looney, and I know what his response was.
5		
6		
7		
8		
9		
10		
11		
12 Q.	Are you saying that Mr. Looney said that he was against Melvin Lowe going to this convention?	12
13		13
14 A.	He didn't say he was against him. He laughed at me and said, no, I did not authorize him to go out and represent Montgomery Public Schools' reading program.	14
15		15
16		
17		
18		
19 Q.	Did Mr. Looney ever come to you and ask that you let Melvin Lowe go to this program?	19
20		20
21 A.	No, he did not.	21
22 Q.	Or tried to abdicate Melvin Lowe going to the program?	22
23		23

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- 1 A. No, he did not.
2 Q. Did he ever say he was against Melvin Lowe
3 going to the program?
4 A. He did not say. He inferred that it was
5 absurd that Mr. Lowe was going to go out and
6 represent the school district just by his body
7 language when he laughed at me and said, of
8 course I did not.
9 Q. The principal at the school approved this
10 leave on October 18, and then it was denied by
11 you November 5th.
12 A. Sounds reasonable.
13 Q. What was the reason on the delay of the
14 denial?
15 A. It's -- Generally most of the requests for
16 detached duty would go through one of the
17 specialists in my office, Carolyn Hicks. If
18 there was one that was of some concern -- and
19 there were often ones of concern -- she would
20 bring it to my attention and say, well,
21 Mr. Barker, what are your feelings about this
22 particular request. She just recently came to
23 me on one that is totally dissimilar, but the

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- 1 web site of the presentation Mr. Lowe did?
2 A. I was not. I still have not been able to find
3 that.
4 (Plaintiff's Exhibit 13 marked for
5 identification.)
6 Q. Is this the leave request documentation that
7 we just talked about?
8 A. Seemingly it is, yes.
9 Q. And then Mr. Lowe made a different request for
10 leave on September 21, 2004?
11 A. September 21, 2004, and this other one was
12 11/5/2004.
13 (Plaintiff's Exhibit 14 marked for
14 identification.)
15 Q. Do you remember why that one was denied?
16 A. I don't remember specifically, but it was
17 commonplace if a person were to go to one of
18 these minority leadership conferences
19 associated with AEA or MCEA that they would
20 make a submission to the superintendent asking
21 for certain individuals to be approved for
22 those particular positions. And then we by
23 and large govern ourselves by the individual

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- 1 reason -- the line of logic goes to say --
2 This is what happens, Bill, and you're not
3 naive enough to not identify with this.
4 A principal, say, for example, will get
5 ready to go to the National Association of
6 School Principals in Las Vegas. Three days
7 later I'm going to get a request for her
8 spouse or his spouse in the school district to
9 go to that same conference, whether they are a
10 school principal or not. I'm forever on the
11 alert to little things such as that to make
12 sure that we're not funding vacations for our
13 employees. That's my responsibility. I have
14 to look at those things to see if they make
15 walking-around sense before I sign my name to
16 them and say that this -- I approve this
17 particular request.

18 Well, in my mind, it made no sense for a
19 person who was not associated with the reading
20 program of the school district to be making a
21 presentation on behalf of the school
22 district. It just didn't make sense.

23 Q. Were you aware of the posting on the school's

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- 1 who the superintendent gave his approval to
2 go. I could only assume Mr. Lowe's name was
3 not on that submittance that was made by MCEA
4 or AEA and as a consequence -- I can think of
5 no other reason why it would have been denied.
6 Q. If Mr. Looney had been for this National
7 Reform Conference, if he had said, yeah,
8 I think Melvin Lowe is the guy to go to that,
9 would you have approved that leave?
10 A. Mr. Looney's position is on a parallel with
11 mine with the school district. I would have
12 respected him making that particular
13 recommendation and allowed him to go because
14 then the responsibility of accountability
15 would have rested with Mr. Looney, not with
16 me.
17 (Off-the-record discussion.)
18 Q. Let me ask you one other question. Do you
19 know if Mr. Looney would have written Mr. Lowe
20 and said, I've exhausted everything I could do
21 to help with this matter; you can cancel your
22 trip or you can take sick leave? Do you know
23 why he would have written him that?

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1	A. I have no idea why he would have.	1 emergency certification. Now, under what
2	Q. That's not consistent with what he related to	2 context, I have no idea. I'm not privy to the
3	you, is it?	3 conversation between the two of them.
4	MS. CARTER: Object to form.	4 Q. Would there be documents that would show when
5	A. That's not his reaction to me. His reaction	5 Daisy Lawrence was going to be closed, when
6	to me, as I said before, was to laugh and say,	6 that decision was made to close it?
7	of course I did not authorize this. But let	7 A. I don't know that there will be documents
8	me put it this way: I'm not accusing	8 officially, but it would have had to have been
9	Mr. Looney of anything. It is not uncommon	9 presented to the board, the proposal for
10	for principals, supervisors in the school	10 closing during the spring of '05, somewhere
11	district, to make the bad guy to be HR. They	11 between January of '05 and the spring of '05.
12	just don't want to face personnel with the	12 Q. Do you recall the meeting -- The
13	fact that this is my decision on it. They'll	13 superintendent testified about a meeting that
14	say, well, I submitted this to HR and HR says	14 was held with all the faculty at Daisy
15	this or says that. It's not uncommon. I'm	15 Lawrence about the closing and how different
16	not saying that Mike would have wimped out	16 folks would get moved to different positions.
17	that way. He probably would have gone ahead	17 Do you remember that?
18	and told him if he did not, but I know what my	18 A. I recall, yes.
19	conversation was with him and I've testified	19 Q. What do you recall of that meeting? What was
20	to it accurately.	20 said?
21	MR. PATTY: We can take a break.	21 A. The superintendent and I visited the campus to
22	(Brief recess.)	22 allay any concerns and fears that the faculty
23	Q. (Continuing by Mr. Patty) Do you recall if a	23 and staff may have had there as to what was
	Page 146	Page 148
1	lady named Katherine Carter Johnson got an	1 going to transpire with the closing of Daisy
2	emergency certificate in 2005 for special ed?	2 Lawrence. We spoke to the faculty and staff.
3	A. Kathy Johnson?	3 And to my recall and to my later clarification
4	Q. Uh-huh (positive response).	4 with Mr. Lowe, we assured the faculty and
5	A. No, I don't.	5 staff that all tenured persons would be placed
6	Q. Do you know if she had a teaching certificate	6 in positions to their liking if they were
7	prior to starting to work for the school	7 available. We were going to make every
8	system?	8 concerted effort to place them in a comparable
9	A. Bill, I'll be glad to research it for you. I	9 position to the one which they held there at
10	don't know Kathy Johnson.	10 Daisy Lawrence. All non-tenured persons --
11	Q. I just thought -- When you said Kathy Johnson,	11 there were three of whom -- were given no
12	I thought, wow, you must know her.	12 assurances other than they could apply for
13	Do you recall a Cynthia Provolt in your	13 positions which came open in the district and
14	office saying to you and to Mr. Lowe and	14 that they would be given due consideration for
15	Ms. Hicks that Mr. Lowe could get an emergency	15 those positions. I later reaffirmed that
16	certificate with the state department?	16 position in writing by way of e-mail to
17	A. No, I do not. I remember Mr. Lowe e-mailing	17 Mr. Lowe at his request roughly a month or so
18	saying that Cynthia Jackson had told him this,	18 later when he inquired -- I guess he was
19	but I don't remember Ms. Provott --	19 growing some concern about whether or not he
20	I call her Jackson. I may call her	20 was going to land a position, although it was
21	Jackson or Provott interchangeably. She is	21 rather early on. I think it was in June. I
22	Jackson now. She was Provott.	22 reaffirmed that position that I could give him
23	-- telling him that he could get an	23 no assurances with regard to placement as I

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1 could give no non-tenured personnel, but that
 2 I encouraged him to keep applying and that
 3 surely something would come about before the
 4 school year -- the next school year started.
 5 And that was the extent of it. That's what I
 6 recall about it.

7 Q. Did the other two non-tenured teachers get
 8 positions with the school?

9 A. They ultimately did. Yes, they did.

10 Q. When did they get positions?

11 A. Bill, to be absolutely honest with you, when
 12 this came up, I checked. All it says is
 13 August of that subsequent school year. If
 14 they had been hired in July, it would say
 15 August. If they had been hired in June, it
 16 would say August. If they had been hired in
 17 August, it would say August. So at some
 18 subsequent point, they interviewed for
 19 teaching positions at other schools and
 20 received them. One of them was a credentialed
 21 special education teacher. And as I told you,
 22 there was a supply/demand situation that
 23 favored them drastically. The other was an

1 school year had started by another elementary
 2 school.

3 Q. Would it be fair to say all certified
 4 employees got positions except Mr. Lowe?

5 A. It would.

6 Q. Would it be fair to say that all the employees
 7 of the school, classified and certified, got
 8 positions except Mr. Lowe?

9 A. I cannot say that unequivocally because I
 10 would have to check with the support. The
 11 only one that I'm familiar with is the young
 12 lady I referenced.

13 Q. Do you know how many non-tenured classified
 14 employees would have been --

15 A. I don't recall.

16 Q. Now, in the spring of 2005, did you have any
 17 contacts regarding Mr. Lowe or with Mr. Lowe
 18 that you recall?

19 A. Spring of 2005? Not that I recall, other than
 20 the visit that I made to the school. I didn't
 21 speak with him individually that day.

22 Q. And what about in the summer of 2005 other
 23 than what we've talked about? Obviously you

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1 elementary ed teacher who interviewed with
 2 some school and got on with them. But to tie
 3 it down to exactly when, I can't say when.

4 Q. Were there any -- All the tenured teachers got
 5 positions, right?

6 A. All the tenured persons got positions, the
 7 last of whom was the guidance counselor that
 8 was referred to earlier by the superintendent.

9 Q. And the principal, who was a contract
 10 principal, got a position?

11 A. That's correct.

12 Q. What about classified employees?

13 A. I would have to check to make sure in that
 14 case. I assume -- As best I recall, there was
 15 a building custodian who was ultimately picked
 16 up by another of the elementary schools after
 17 having done a temporary stint for a person who
 18 was on sick leave at central office, because
 19 she used to keep that building over there
 20 very, very clean, immaculately clean, and she
 21 interviewed for a position -- an interim
 22 position. She was brought on on an interim
 23 basis, and then she was hired well after the

1 don't need to rehash that.

2 A. No, other than maybe some e-mails that were --
 3 may have been exchanged between the two of
 4 us. He may have called me up on an occasion
 5 and -- I need a job; I'm getting a little
 6 antsy. I cannot say unequivocally, but it
 7 seems as though I recall a conversation of
 8 that nature.

9 Q. How many job openings for certified employees
 10 were there this summer?

11 A. Educated guess, 200, 250.

12 Q. How many openings do you think there were that
 13 Mr. Lowe would have had the proper
 14 certification for?

15 A. There were numerous elementary ed positions
 16 that were vacant throughout the school
 17 district, and he had the certification for
 18 elementary education. Now, I cannot -- I
 19 don't recall whether or not he was highly
 20 qualified. That would be the only issue with
 21 regard to restricting placement. If you're
 22 not highly qualified, we could not place you
 23 in a position -- school that was receiving

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1 federal funds. He may very well have been 2 highly qualified and may have been a candidate 3 for all of those. I didn't handle the 4 elementary end of it so I'm not that aware of 5 whether or not he was highly qualified at the 6 time.	1 be more than 20 percent? Is that the norm? 2 A. I'd hate to guess. I would think that sounds 3 reasonable, but I just would hate to guess. 4 Q. Connie Mizell that was on the committee that 5 interviewed Mr. Lowe, did she have an 6 allegation made against her of a racial nature 7 this past year?
7 Q. I thought that teachers only had to be highly 8 qualified by the end of this school year in 9 order to be employed?	8 A. She had an allegation made. I don't think it 9 was this past year. I want to think it's at 10 least one year removed, because it was during 11 the time that she was principal at one of the 12 elementary schools. And she's been at central 13 office for a full year now.
10 A. That is true. However, we are in a gradual 11 plan to reduce the number. You could not have 12 18 non-highly qualified persons at a Title I 13 school for last year and then have 19 this 14 year. You can only go in the other 15 direction. So you couldn't hire additional 16 ones. You could still have individuals on the 17 staff who were not highly qualified, but you 18 couldn't hire additional ones and place them 19 at the Title I school. But that may have been 20 a moot issue. He may very well have been 21 highly qualified. I cannot say unequivocally 22 today because -- All it would take is for me 23 to pull his record when I got back to see.	14 Q. Well, what was that allegation? 15 A. It was saying that she allowed race to factor 16 into her administrative decisions there at the 17 school. 18 Q. Was it made by an employee or a parent? 19 A. It was made by her assistant principal at the 20 time, her administrative assistant. 21 Q. Who is that person's name? 22 A. Pat Johnson. 23 Q. Is she employed with the school system now?
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1 Q. Of those 200 position that would have been 2 available this summer, how many of those 3 people would it have been the first year they 4 had ever worked for Montgomery County? Do you 5 know judgment-wise? 6 A. I would hate to guess. I really don't know. 7 Q. Is it less than 50 percent? 8 A. I would venture to say it would be because a 9 good number of those individuals who are 10 non-renewed from previous years at other 11 settings may very well shore up whatever 12 certification deficiencies they may have. 13 They may be given another opportunity by a 14 different principal all together different 15 from who may have recommended them from being 16 non-renewed the prior year. So a good number 17 of them. It is not uncommon for us to -- if 18 we have X number of individuals to be 19 non-renewed to have a 50 percent rate of those 20 individuals being placed before the next year 21 takes place. 22 Q. Do you have a judgment of these new hires that 23 never worked in the school system before would	1 A. She recently retired at the end of December. 2 Q. Something was alluded to by the superintendent 3 about Ms. Mizell going on administrative leave 4 this past fall. What was that? Is that 5 related to this incident or is that something 6 else? 7 MS. CARTER: Object to form. I 8 don't think she said she went on 9 administrative leave. You asked 10 her if -- 11 MR. PATTY: Yeah. And I thought she 12 said she thought she had, but she 13 thought it was something to do 14 with -- I didn't really get her 15 explanation of it. 16 A. I think she was probably alluding to back when 17 that situation came about because I don't 18 remember her going on administrative leave 19 within the last year. 20 Q. Is the school on unitary status now? 21 A. Define unitary. 22 Q. No longer under the Lee v. Macon, or is it 23 still under that order?

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1 A. I don't think we're under -- I'm not sure. I
 2 can't say. That's something I'll find out,
 3 though. It makes me seem uninformed, but I
 4 can't say.

5 MS. CARTER: No. He's talking about
 6 are you still under the order
 7 that dictated the racial issues
 8 in hiring. You probably just
 9 don't recognize the case name.
 10 And y'all aren't. We talk about
 11 it all the time. That's just
 12 call it the Lee v. Macon case.

13 A. It just brings on -- Lee v. Macon to me was
 14 relative to unusual placements of students
 15 into special education and gifted, those type
 16 things.

17 Q. That was the desegregation order and also
 18 hiring --

19 A. Oh, okay.

20 MS. CARTER: Yeah, he doesn't
 21 know -- I don't think we refer to
 22 it as that when we talk about
 23 it.

1 not that person is properly certified before
 2 you give an answer back and say yea or nay.
 3 Generally that doesn't get to the
 4 superintendent. That's never -- that's not in
 5 that file with regard -- After I get that and
 6 check out the credentials, it's very possible
 7 that that could be shredded and we go on to
 8 the next case because that happens 250 times a
 9 summer, you know.

10 Q. So it may be best to ask the principals if
 11 they have anything --

12 A. Yeah.

13 Q. -- relative to that?

14 A. It may very well be.

15 Q. And as far as seeing what the individuals --
 16 whether it's a job application or resume, all
 17 that would be in the person's personnel file,
 18 right?

19 A. That's correct.

20 MS. CARTER: I will tell you when we
 21 gathered that stuff, I didn't
 22 tell them to copy the application
 23 because in my mind I was thinking

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1 Q. I know you talked about there was a form that
 2 you prepared that has your recommendations
 3 that you give the superintendent regarding
 4 employment, so there would be those documents
 5 possibly in your recommendation file. And
 6 then that file would also contain any
 7 correspondence that the principal gives you
 8 regarding that employee wanting to hire him?

9 A. Not necessarily.

10 Q. Would I need to go to the principal, then, to
 11 get that document, or where would I get that?

12 A. Generally that's going to be an e-mail.

13 Generally most principals have gotten to the
 14 point where they'll say, I've interviewed the
 15 applicants for this particular position, and I
 16 recommend John Doe for the science vacancy
 17 replacing Tim Smith. And that would be the
 18 extent of it because they know that most
 19 teaching positions are not going to raise any
 20 eye with regard to challenging it as long as
 21 the person meets the certification. So that's
 22 for the purpose of if we have not already
 23 checked it out, check it out to see whether or

1 they filled that out when they
 2 first got hired, which was silly
 3 because I guess some of those
 4 people could have been new
 5 hires. But we can pull the aps
 6 for those people. I just said
 7 send their credentials. I
 8 haven't looked at the stuff yet,
 9 but I think it was resumes or
 10 their certification sheets.

11 MR. PATTY: Mostly it looks like
 12 it's certifications.

13 MS. CARTER: So we can pull the aps
 14 and copy those too.

15 Q. I showed Dr. Purcell an e-mail she received on
 16 June 22, 2005. It's Exhibit 5. Do you recall
 17 seeing that document?

18 A. Yes. This looks very much like the document
 19 that was shared with me by Dr. Purcell.

20 Q. What did you do after receiving that document?

21 A. There were some rather serious allegations in
 22 there with regard to what Mr. Lowe felt was
 23 things that had been said to him by Dr. Owens

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1 and by various people, and all of them were 2 alluding to the fact that he thought that 3 there was evidently some block of his 4 assignments by the HR office. And so since we 5 had just finished the EEOC complaint or the 6 EEOC complaint may still have been unresolved 7 at that particular point, I remember getting 8 this memo, calling Elizabeth Carter here 9 and --	1 Q. You were pretty mad about that document? 2 A. No, sir, not mad about it. Disappointed that 3 Mr. Lowe, who had proven himself to be a 4 reputable teacher in the school district, 5 would take such carelessness in sending this 6 type of documentation to the superintendent of 7 education. I cannot make a case for him when 8 he is sending that. If you have taken the 9 time to read it, it's barely coherent. It's 10 despicable in terms of a professional 11 corresponding with the superintendent.
10 MS. CARTER: Don't go into anything 11 we --	10 Q. Was Carla Winborne told to go -- I'm jumping 11 around a little bit. Was she told to go tell 12 Dr. Owens that he could not hire Mr. Lowe?
12 MR. PATTY: Yeah, don't --	12 A. Carla Winborne consulted me, and I told her 13 basically the process that was going on. I 14 told her that I had asked Connie Mizell to get 15 Dr. Lowe some additional applicants as it 16 related to the reading coach position and that 17 she could not accept his recommendation as a 18 reading coach until that issue was resolved. 19 So her response I assume was, I cannot hire 20 Mr. Lowe at this particular time, because I 21 Dr. Owens told to him, I knew that I had had
22	22
23	23
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1 no conversation with Dr. Owens -- I haven't 2 discussed Mr. Lowe in an unprofessional manner 3 with Dr. Owens at any time. So I knew that 4 this was totally unfounded. Not saying that 5 it -- the conversation did not happen between 6 the two of them, but I didn't follow up on it 7 because I knew there was no possibility for it 8 to be true.	1 didn't give her any additional detail.
9 Q. So did you interview anybody with regard to 10 that Exhibit 5?	9 Q. After he had interviewed the people that you 11 wanted him to interview, did Carla Winborne 12 tell or did you instruct Carla Winborne to 13 tell Dr. Owens to tell -- tell Dr. Owens that 14 he could not hire Melvin Lowe, that he had to 15 pick somebody else?
11 A. I didn't interview anyone: I talked back with 12 the superintendent. My comments to the 13 superintendent were, have you looked at the 14 structure of this e-mail. It makes a mighty 15 bad point for a professional in the field to 16 e-mail the superintendent of education a 17 document of this nature that is barely 18 coherent, and that same person is asking me to 19 allow them to go out and represent the school 20 district and you send a document of this 21 nature to the superintendent of education whom 22 you would think you would be on your Ps and 23 Qs. I remember making those comments to her.	10 A. No, I did not. I just told Carla Winborne 11 that we could not hire Melvin Lowe at this 12 particular time because we were interviewing 13 some additional applicants and that that 14 process -- that she could not accept his 15 recommendation for that. And I told Dr. Owens 16 the same thing. Dr. Owens made it clear to me 17 that he still wanted Mr. Lowe as his reading 18 coach. I told him that most likely that would 19 not happen based upon the strength of the 20 candidates and what Dr. Purcell wanted for 21 that particular school.
	20 Q. Did Dr. Owens ever defend you -- defend Melvin 21 Lowe before you or before central office 22 personnel to your knowledge and tried to get 23 y'all to give him some job?

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- 1 A. No, I do not.
 2 Q. How about Janice Harvey?
 3 A. No, I do not.
 4 MS. CARTER: What was the first name
 5 you said, Bill? Those are not
 6 names I've heard.
 7 MR. PATTY: Pat Carnegie.
 8 Q. And you had no conversations with the
 9 superintendent of Bullock County about
 10 Mr. Lowe?
 11 A. Other than to clear the fact when he was
 12 considering a return to the school district
 13 that we would not be looked at as tampering.
 14 Q. That was with the assistant superintendent?
 15 A. Right.
 16 Q. But nothing with the superintendent?
 17 A. No, nothing with the superintendent. That's
 18 correct.
 19 Q. And you never told Abrams or Owens that they
 20 need to hire women?
 21 A. No.
 22 Q. Were there any problems with Mr. Owens' work
 23 or did you get any complaints regarding his

- 1 was you talked to the school board attorney?
 2 A. Yes.
 3 Q. And you then went back and talked to the
 4 superintendent?
 5 A. I went back to report to the superintendent
 6 that I had turned that information over to the
 7 school board attorney.
 8 Q. And that's all that was done with that letter?
 9 A. Other than my --
 10 MS. CARTER: Object to --
 11 A. Other than my making the comments that I told
 12 you I made earlier.
 13 Q. All right.
 14 Would Exhibit 5 fall in the category of
 15 complaint or grievance?
 16 A. Let's see what you have here. I would put it
 17 in the category of venting a complaint.
 18 Q. Help me understand -- I want to try to -- I
 19 think what I'm going to do is refer -- These
 20 are job notices, and they have attached to
 21 them some documents that go with them. Rather
 22 than just keep sticking all of them, what I'm
 23 going to do is collectively make this Exhibit

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- 1 work in his two years at Daisy Lawrence?
 2 A. Mr. Lowe you mean?
 3 Q. Yes. I'm sorry.
 4 A. Not to my knowledge, no.
 5 Q. And you did not have -- you don't recall a
 6 vague conversation with Mr. Lowe and
 7 Mr. Abrams after Mr. Abrams gave you a letter
 8 of recommendation for Mr. Lowe where you said
 9 that Abrams wants you real bad, but I have to
 10 see what Carter will do because he may not
 11 give on this or bend on this?
 12 A. No, I did not have that conversation.
 13 Q. Have we covered all the conversations you can
 14 recall with Mr. Lowe during his employment
 15 here at the school?
 16 MS. CARTER: Object to form.
 17 A. All that I can recall.
 18 Q. Have we covered all the conversations about
 19 Mr. Lowe and his job at the school that you
 20 may have had with third parties?
 21 A. All that I can recall.
 22 Q. Let me make sure it's clear. With regard to
 23 Plaintiff's Exhibit 5, what was done with this

- 1 16, and then I'll refer to the individual
 2 document by its Bates number.
 3 (Plaintiff's Exhibit 16 marked for
 4 identification.)
 5 Q. What I'm trying to do is understand which
 6 announcements and positions these go with.
 7 Let me show you the first one, which is
 8 Bates numbered 1508. And it looks like the
 9 way I'm reading this is the successful
 10 candidate has got their certificate attached
 11 to the announcement, which is Bates number
 12 1509. Can you tell me what position that goes
 13 with?
 14 A. Position of reading coaches, and this is May
 15 9, 2005. So I would assume that this was for
 16 positions of reading coaches at various school
 17 sites throughout the school district entering
 18 the summer of 2005, positions that might come
 19 open.
 20 Q. Would that have covered the -- Ms. Freeney is
 21 the person's name attached. Does that
 22 announcement cover the position with
 23 Dr. Owens?

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- 1 A. It does. It would have.
 2 Q. Now let's look at Bates number 1319. It says
 3 applications accepted for position of
 4 administrative assistants at Crump Elementary
 5 and Brewbaker, and that's August 18, 2003.
 6 And then there's attached two people, Rhonda
 7 Oates-Tucker and Ms. Crawford.

8 Do you remember if those are white
 9 females? Black females?

- 10 A. Both of those are black females.

- 11 Q. Do you know -- I'll tell you what I'm going to
 12 do. I don't know if I necessarily want to
 13 mark this, but it may be helpful if you can --

14 MS. CARTER: Are you looking at the
 15 list of teachers?

16 MR. PATTY: Right.

17 MS. CARTER: Let me tell you how we
 18 put this together. We took
 19 y'all's list from the corporate
 20 rep deposition notice, and then I
 21 added one that I thought y'all
 22 had missed and I added the four
 23 from this past summer. So if he

- 1 Q. Let's look at Bates number 1323.
 2 A. Educational specialist, office of curriculum
 3 and instruction. That was dated June 4 of
 4 2004. Educational specialist, June 4, 2004,
 5 that's 16-H.

- 6 Q. Would Mr. Lowe have the educational and
 7 certification qualifications to be an
 8 educational specialist?

9 A. Generally the posted notice would read
 10 something like at least three years successful
 11 teaching experience and endorsement in
 12 administration and supervision. That is to
 13 attract a full scale of applicants. Ed
 14 specialist positions in many instances have
 15 gone to individuals who have prior
 16 administrative certification -- I mean
 17 administrative experience, but we leave it
 18 open so that we might get a diamond in the
 19 rough.

- 20 Q. So he meets the minimum --

- 21 A. Yes, he does.

- 22 Q. Let's go on, then.

23 Connie Mizell, white female?

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- 1 could look at that while he did
 2 it, it might go faster.

3 MR. PATTY: That sounds good.

4 MS. CARTER: In fact, I actually
 5 wrote a list out that I should go
 6 get and we should mark because
 7 since that's how you collected
 8 the documents, it might be --

- 9 Q. I'll tell you what. If you could just look
 10 at -- This is the list. If you can just tell
 11 me -- When I give you a Bates number, if you
 12 can tell me which one -- the number from the
 13 corporate list --

- 14 A. Like 16-A or 16-B, etc.?

- 15 Q. Right. And that will make it go a lot faster.
 16 I'm looking at Bates number 1319. Which
 17 one does that correspond with?

18 MS. CARTER: Oh, he's not going to
 19 know unless you tell him --

20 MR. PATTY: There we go.

- 21 A. The administrative assistants at Crump
 22 Elementary and Brewbaker Junior High School,
 23 that's 16-A.

- 1 A. White female.

- 2 Q. The next document is 1506.

- 3 A. That is May of 2005, special education
 4 teachers, so that's relative to the --

5 MS. CARTER: It's not on that list.
 6 Those are the ones I added.

- 7 A. That is basically the special education
 8 teacher positions that you inquired about at
 9 Robert E. Lee High School -- we're still under
 10 that -- and at McKee Junior High School.

- 11 Q. There's one --

12 MR. PATTY: It looks like there's
 13 only one certification with
 14 that.

15 MS. CARTER: There is.

- 16 A. This is Carlos Cherry. This was McKee Junior
 17 High School, so that probably -- This is the
 18 one that we put in here for McKee. I'm sure
 19 we have another one in there for --

20 MS. CARTER: For Mr. Abrams.

- 21 A. This is McKee Junior High School. That's the
 22 individual who filled that position, black
 23 male.

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1 Q. Bates number 1329.	1	administrative assistant positions.
2 A. Educational technology professional	2	Administrative assistant, that's 16-C. That's
3 development program coordinator, June of 2003.	3	Robert E. Lee High School and various ones.
4 MS. CARTER: It's July of --	4	Let see. Let me see the person who got the
5 A. Yeah, that's July of 2003. This has to be it	5	position. Lovell Seals. No. This was Carver
6 here, the September 1 position that he alluded	6	High School here -- the person who received
7 to as 2003 educational specialist and	7	the position at Carver High School. We have a
8 educational technology professional	8	whole list of individuals here who received
9 development program coordinator and Title I	9	administrative positions based on the same
10 school-wide instructional -- There's several	10	posted notice, and we have them checked off on
11 on here. That's 16-B.	11	here, like Lovell Seals, Darryl Washington.
12 Q. Is it Kevin Todd Culpepper?	12	Q. Is that this collection starting with 1344 and
13 A. Uh-huh (positive response).	13	going through 1362?
14 Q. White male? Black male?	14	A. Oh, yeah. These are the rest of those.
15 A. White male.	15	MS. CARTER: That must have gotten
16 Q. Angela Mangum?	16	separated.
17 A. Angela Mangum, black female.	17	A. Lovell Seals, Darryl Washington, Deidre
18 Q. Will there be -- Just so I understand	18	McRay -- Yeah, that's that whole list. All of
19 document-wise, will there be anything that	19	these individuals were individuals who
20 will show -- I think you've talked about this	20	received administrative placement as a result
21 a little bit. Will there be anything to show	21	of this single notice.
22 how their interviews went for these different	22	MS. CARTER: And you're referring to
23 positions, who the three top candidates were,	23	Bates number 1344 through Bates
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1 any documentation of what -- how the	1	number 1362.
2 interviews went, how they were selected,	2	A. School-wide instructional assistants,
3 anything like that?	3	instructional assistants -- Yeah, all of
4 A. Generally if they were system-level positions	4	those.
5 or above, there would be a -- there should be	5	Q. Would an instructional assistant position be
6 a paper trail documenting who the committee	6	one that Mr. Lowe would have the
7 was recommending -- who the committee was and	7	qualifications of education certification for?
8 who the committee was recommending for a	8	A. Yes. I can give you the race and -- I
9 particular position. I would think that I	9	recognize --
10 would have the majority of those. Those are	10	Q. Go ahead.
11 submitted to the superintendent. If she	11	A. Lovell Seals is a black male. Darryl
12 returned those to me, then I would have those,	12	Washington is a black male. Deidra McRay is a
13 but she's not required to return them to me.	13	black female. Virginia Browder is a black
14 But I would give her a written documentation	14	female. Mona Green is a black female. Tara
15 as to these are the individuals, these are the	15	Carr is a black female. Dierdra Ramsey is a
16 resumes for those individuals, and this is the	16	black female. Barbara Sankey is a black
17 interview panel. We just did one like that	17	female, and Orlean Baldwin, black female.
18 yesterday.	18	Anissha Officer, black female; Patrick Nelson,
19 Q. What would that be called if we want to refer	19	black male; Lakisha Stokes, black female;
20 to that?	20	Tamara Winston, black female.
21 A. Recommendations to the superintendent.	21	Q. Now, looking at Bates 1363 --
22 Q. Let me show you Bates number 1340.	22	A. Administrative assistant, specifically at
23 A. This was August 18, 2003. Various	23	Robert E. Lee High School.

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- 1 MS. CARTER: When you read off
 2 documents, speak more clearly
 3 because she's trying to take it
 4 down.
- 5 A. Administrative assistant at Robert E. Lee,
 6 16-C. This person who received the position
 7 was Gloria Odutola, who is a black female.
- 8 Q. I'll show you Bates number 1367.
- 9 A. Educational specialist, office of student and
 10 community services, September 10, 2003.
 11 That's 16-D, and the person receiving that
 12 particular position was Susan Terrell, which
 13 is a white female.
- 14 Q. I'll show you Bates number 1371.
- 15 A. Positions of elementary teachers at Brewbaker
 16 Intermediate and McKee Elementary Schools,
 17 September 15, 2003. That would be 16-E and
 18 16-F, and the individuals who received those
 19 were Jennifer Turner, and I'm not sure whether
 20 she's black or white, suzie Prater, who is a
 21 black female. I'm not absolutely sure on
 22 Jennifer Turner.
- 23 Q. I'll show you Bates number 1374. There may be

1 2004, and any and all administrative positions
 2 that were available. And these are Hosea
 3 Addison who went to Lanier Academic Magnet
 4 Program, black male; Exzealia Baptiste, who
 5 went to the alternative education program at
 6 Fews, black female; Jeri Brown, who went to
 7 Robert E. Lee High School, white female;
 8 Rodrick James who was hired at Chisholm
 9 Elementary School, black male; Emily Little,
 10 who was hired at -- Let's see if the school is
 11 on here. I'm not absolutely sure on the
 12 school she was placed. She's a white female,
 13 Emily Little.

14 Ronald Ashley, black male, hired as the
 15 administrative assistant at Booker T.
 16 Washington High School; Bobby Lowe, black
 17 male, hired at Floyd Elementary School; Mary
 18 Markham, black female, another one that I'm
 19 not absolutely sure on the school so I need to
 20 make a note and let you know where she was.

21 Mary Norman, who was hired as an
 22 administrative assistant at Robert E. Lee High
 23 School and ultimately transferred to Floyd

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- 1 some stuff that --
- 2 A. Administrative assistant and assistant
 3 principals as positions become available for
 4 the 2004-2005 school year, and this is to
 5 begin to accumulate all interested parties in
 6 administrative placements during the late or
 7 the early spring of 2004. This is dated
 8 February 25, 2004, and this is indicative that
 9 the position at Thelma Morris -- Let me see
 10 which one that may be. Administrative
 11 assistant at TS Morris, that's 16-O. And
 12 let's see who the other one is. That's the
 13 one. That's just one, 16-O, administrative
 14 assistant at TS Morris, who is a black female.
- 15 Q. I've got a stack here that goes 1378 through
 16 1446 -- 7 -- 1447. I don't know if those go
 17 with the ones you just had there or not.
- 18 A. Let's see. These are probably administrative
 19 assistants throughout the school district. G
 20 up here. So she's probably included in --
 21 That's the one specifically for TS Morris, but
 22 all of these are 16-G, the administrative
 23 assistants position at -- beginning May 14,

1 Middle School, white female, in both
 2 capacities as the administrative assistant or
 3 the assistant principal. Shanetha Paterson,
 4 black female, was hired at Nixon Elementary
 5 School as the assistant principal; Antoine
 6 Richardson, black male, hired at Robert E. Lee
 7 High School as administrative assistant;
 8 Ferlisi Ross, black female -- Ferlisa Ross,
 9 black female, hired at Robert E. Lee High
 10 School as the assistant principal, before that
 11 hired as administrative assistant at Lanier
 12 High School. Both of them would probably fall
 13 within this time frame.

14 Durwood Wilson, black male, hired as the
 15 administrative assistant at Davis Elementary
 16 School and ultimately transferred to Brewbaker
 17 Junior High School. Dionne Woody, black
 18 female. I think she was hired at Nixon
 19 Elementary School to replace Shanetha Paterson
 20 when she left, black female. And Sonya Floyd,
 21 the black female who was hired for the
 22 assistant position -- administrative
 23 assistant's position at McKee Junior High

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1	School. I know my people.	1 and how they react to the response?
2	Q. Did you say Sonya Floyd was a black female?	2 A. Uh-huh (positive response). And then they
3	A. Black female.	3 will generally be rated 1, 2, 3 or 4, whether
4	Q. Bates number 1448.	4 there was in-depth knowledge, surface
5	A. June 4, 2004, educational specialist, office	5 knowledge, no demonstrated knowledge, that
6	of curriculum and instruction. June 4, 2004	6 type of thing.
7	educational specialist, that's 16-H. And the	7 Q. And that's based on their judgment call of how
8	person who received it was Thomas Toleston,	8 that person answers that question?
9	black male.	9 A. Exactly.
10	Q. 1450, it looks like at the bottom it says the	10 Q. What kind of training goes into instruct the
11	position was not filled.	11 individuals of how they need to make that
12	A. Right. This is Title I program evaluator, and	12 evaluation?
13	it went unfilled. It was posted and we got	13 A. Well, generally we try to get an individual
14	applicants, and then the funding for it fell	14 that's already in a supervisory position. We
15	through so it was not filled.	15 try get a person who is a specialist to sit in
16	Q. 1452.	16 on it, or if you're selecting school reading
17	A. Title I teacher/tutor, skills lab at Houston	17 coaches, you might very well get a committee
18	Hills Junior High School. That was 16-J, and	18 that is composed of system-wide reading
19	the person who filled it was Essie Baker,	19 coaches or -- who has already undergone the
20	black female.	20 same type of training that they are
21	Q. Would it be unusual for a position to be	21 interviewing for. We try our very best to
22	filled without the principal having any input	22 place those kind of people on those
23	into who is being selected?	23 positions. Anytime there's any question, then
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1	A. No. We try diligently not to do that.	1 I might sit in just to make sure that accepted
2	Q. So that would be out of the ordinary if a	2 protocol is being followed.
3	position was filled before a principal was	3 Q. Does that mean that there's not a specific
4	consulted about who was going to have that	4 training that goes into this is how you should
5	position?	5 evaluate on this rubric?
6	A. Generally that is, yes.	6 A. No. I mean, there's some subjectivity to it
7	Q. Let me show you Bates 1454.	7 as to what you hear.
8	A. 1454 is two-system reading specialist, office	8 Q. Like with the PEPE, I remember everybody who
9	of curriculum and instruction, June 25, 2004.	9 had to learn how to do the PEPE, they had to
10	That's 16-K, and the individuals were Karen	10 go to classes for PEPE and they had to take
11	Vann -- that's the one I alluded to in earlier	11 tests on PEPE, and they had to see how they
12	testimony -- Karen Vann, white female, and	12 evaluated compared to other people who
13	Gloria Odutola, black female.	13 evaluated.
14	Q. The recommendations file you keep, will it	14 Is there anything of that nature done with
15	show why someone was picked?	15 this process?
16	A. Usually there's a rubric if there's a	16 A. No.
17	committee that -- and they will generally rate	17 Q. Let me show you 1469.
18	that individual based on the questions.	18 A. System-wide math coach specialist, Title I,
19	That's why we're so insistent that the same	19 June 25, 2004. That's 16-L. We had math
20	questions are asked of everybody so they can	20 specialists and reading specialists: Lamecha
21	be rated. And there's --	21 James, black female; Cathy Simmons, white
22	Q. Do y'all keep the -- They ask the questions	22 female; Sheila Helms, white female. That's
23	and they take notes as to what the response is	23 it. Those were the three.

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- 1 Q. Let me show you Bates 1475.
 2 A. District resource/attendance officer, office
 3 of student and community services. That's
 4 16-M, and that position wasn't filled,
 5 although it was -- It was interviewed for, but
 6 it was not filled because the funds were not
 7 there. The resources were reallocated.
 8 Q. Bates 1476.
 9 A. Title I school-wide instructional assistants
 10 at various school locations. That's 16-N.
 11 Q. Was Mr. Lowe qualified for that position?
 12 A. That's correct. Now, the vast majority of
 13 these -- I called them out a moment ago when I
 14 was going through the list. The vast majority
 15 of these were already covered in a previous
 16 one, and then there were several -- the four
 17 at the bottom after 2004. And I'll go over
 18 those four if it's okay with you.
 19 Q. That's fine. That will work.
 20 A. Anissha Officer is a black female, and she's
 21 at Harrison. She was at Harrison. Patrick
 22 Nelson, black male, at Bellingrath. Lakisha
 23 Stokes was a black female at Seth Johnson.

1 instructional assistants, this was the most
 2 recent school-wide instructional assistant so
 3 she was not on that original list. But she
 4 was the most recent one that we had named,
 5 white female. She's not alluded to
 6 specifically here.

- 7 Q. 1499.
 8 A. Teachers, grades K through six, special
 9 education and multimedia. This is our general
 10 posted notice that we send out at the end of
 11 the year to try to attract teachers in various
 12 disciplines, and this is just a general posted
 13 notice here. And Howard Floyd -- This is six
 14 through twelve. I'd have to discern the exact
 15 school, what teacher -- Howard Floyd.
 16 MS. CARTER: I made y'all pull that
 17 one, too, because it's from this
 18 year. Right?
 19 A. That was Robert E. Lee High School, if I
 20 remember correctly. There were two special
 21 education who were selected from Robert E. Lee
 22 High School. Howard Floyd was one of the two.
 23 Q. Bates number 1501.

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- 1 Here's Tamara Harvey. She's a black female
 2 and she was at McIntyre.
 3 Q. Bates number 1492.
 4 A. Administrative assistant and assistant
 5 principal positions as they become available
 6 for the 2004-2005 school term, and we have
 7 Denitta Easterling as a -- This must be one
 8 particular to Thelma Morris. Yes. That's O,
 9 administrative assistant at TS Morris
 10 Elementary School, which is 16-O, black
 11 female.
 12 Q. Bates number 1494.
 13 A. All right. This is Sonya Floyd, so this is
 14 the administrative assistant at McKee Junior
 15 High School, black female. That's 16-P. The
 16 same posted notice but 16-P, different school.
 17 Q. Okay. 1496.
 18 A. Title I school-wide instructional assistant at
 19 Southlawn Middle School, and that was Pamela
 20 Cloud, white female. And I don't think that
 21 one is listed on here. Let's see. Southlawn
 22 Middle School.
 23 After you requested all of the school-wide

- 1 A. This is Ronald Ashley. This says applications
 2 are now being accepted for the position of
 3 administrative assistant at Johnson
 4 Elementary, Carver Senior High, Brewbaker
 5 Junior High, Booker T. Washington Magnet High
 6 School, and any other elementary, et cetera,
 7 middle school. And this is the one where you
 8 requested documentation of the person who
 9 received the position at Booker T. Washington
 10 High School -- Magnet High School. Ronald
 11 Ashley, black male.
 12 Q. In the minutes we have, we have the personnel
 13 reports and then we have one set that's
 14 actually the minutes. For each personnel
 15 report, should there be minutes that show the
 16 approval or adoption of that personnel report
 17 separate from the personnel report?
 18 A. Yeah. There are minutes separate from -- we
 19 gave you that -- If we gave you that, it was
 20 by mistake because we didn't realize that
 21 you --
 22 Q. I assume these are personnel reports.
 23 A. I didn't realize that's what you were asking

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1 for. 2 Q. This is -- I want to just -- 3 MR. PATTY: Why don't we go off the 4 record for just a second. 5 (Brief off-the-record discussion 6 followed by a brief recess.) 7 EXAMINATION	1 certification for those individuals. But 2 that's their responsibility to present the 3 coursework requirements to us, the proof of 4 coursework requirements. 5 Q. And y'all help them do the applications and so 6 forth once they've provided that proof to you; 7 is that correct? 8 A. That is correct. 9 Q. And isn't it -- did you ever tell David Sikes 10 or Bobby Abrams that they could not hire 11 Melvin Lowe? 12 A. No. 13 Q. If Melvin Lowe had the coursework for the 14 certification or if he had just simply been 15 certified, would you have recommended that he 16 be hired for those positions? 17 MR. PATTY: Object to the form. 18 A. Gladly, because we had an extreme need in that 19 particular area. 20 Q. There is -- I don't know how we're going to 21 get through this, but there are a lot of jobs 22 that we've talked about in regards to just the 23 list of job postings and successful applicants
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23
1 aware of the fact that Pam Cloud had any type 2 of legal proceeding against the board, and she 3 said her recommendation was made totally 4 oblivious to that. She did not know she had 5 any action. 6 Q. Pam Cloud has sued y'all claiming race 7 discrimination; isn't that correct? 8 A. That's correct. 9 Q. Did you block her efforts to get that 10 promotion after she sued you? 11 A. No, I did not. 12 Q. Is it a policy of you or the Montgomery Public 13 Schools to provide special consideration to 14 someone simply because they have sued you? 15 A. No, absolutely not. 16 Q. Have you to your knowledge ever undertaken 17 gathering the paperwork or doing the 18 investigative work for an individual when they 19 were trying to get an emergency certification? 20 A. No, I did not. Basically they would have to 21 already come to me with the necessary 22 coursework requirements, and then we would 23 have to be looking for an alternative	1 that you went through today that have in some 2 way or another been referenced in Mr. Lowe's 3 EEOC charge, information he's given the EEOC, 4 his complaint in this lawsuit or in his 5 deposition. And so my question to you is 6 this. 7 You've testified here today that Dr. Owens 8 recommended him for the reading coach position 9 at Paterson; is that correct? 10 A. That's correct. 11 Q. And there was no question in your mind that 12 Dr. Owens wanted him? 13 A. That is correct. 14 Q. Is there any other job that you can recall 15 wherein a principal recommended to you or 16 asked you to hire Melvin Lowe wherein that 17 recommendation was not followed? 18 A. No, there is not. 19 Q. When you recommended or were involved in the 20 disciplinary matters of Mr. Lowe in 2002 when 21 he was a teacher at Southlawn, was it a 22 consideration of yours that it was the third 23 year in a row that you had had to deal with
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23

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1 Mr. Lowe in regards to allegations and how he
 2 handled children?

3 MR. PATTY: Object to the form.

4 A. It was. I knew that I had investigated two
 5 previous charges with regard to mishandling of
 6 students, and it factored into my decision
 7 with regard to the recommendation that I made
 8 to the superintendent.

9 Q. After he was non-renewed at the end of that
 10 year, he worked in Bullock County a year; is
 11 that correct?

12 A. Yes. To my understanding, yes.

13 Q. And then Dr. Carter recommended to the board
 14 that he be hired back at Montgomery Public
 15 Schools, correct?

16 A. Yes. After school had started in the 2003
 17 school year.

18 Q. This might be an unfair question, and I should
 19 have warned you about it.

20 Give us an idea of how many people or
 21 teachers in the school system you would say,
 22 if you can, that have administrative or
 23 supervision certifications but are not serving

1 that year.

2 A. That's correct.

3 Q. Did the school board vote to hire or approve
 4 her hiring of summer school that year? Was
 5 that school board action?

6 A. I do not recall whether that was presented to
 7 the school board or not. That was a position
 8 that was actually manned by the state of
 9 Alabama. I would not have thought that it
 10 would have gone through Montgomery Public
 11 Schools school records because they were using
 12 our site, but they were paying the funds and
 13 they were doing the actual hiring.

14 Q. Did anybody ever tell you that they wanted to
 15 hire Melvin Lowe for that position?

16 A. No.

17 Q. To your knowledge who recommended or thought
 18 that Denitta needed to take that job or should
 19 take that job for the summer?

20 A. I would think that it would have been the
 21 school principal there, Sophia Johnson.

22 Q. And what is her race?

23 A. She's a black female.

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1 in administrative or supervisory capacities.

2 A. It would be a guess, but there are numerous
 3 ones. We generally on the average run
 4 anywhere from 30 to 50 applicants through that
 5 general screening process each of the last two
 6 or three years. So probably a tenth of those
 7 actually or maybe as many as 20 percent of
 8 them actually get placed, and then the next
 9 year we go through the same process. So I
 10 would venture to say there are numerous
 11 individuals with the certification out there
 12 who have not been placed in an
 13 administrative-type position.

14 Q. Is there any type of requirement on behalf of
 15 Montgomery Public Schools that the person
 16 interviewing for a job with the most education
 17 must be hired?

18 A. No, there's no such requirement.

19 Q. You've been asked questions today about
 20 Denitta Easterling who, if I understand the
 21 testimony correctly, served as a summer school
 22 principal one summer when her certification
 23 was not actually completed until August of

1 Q. Have you ever told anybody that they had to
 2 hire a woman or a female in an administrative
 3 position at their school or at any position at
 4 their school?

5 A. No.

6 Q. Have you ever told anybody that they had to
 7 hire a white or black applicant at their
 8 school?

9 A. No.

10 Q. When you got word in the summer of 2005 that
 11 Mr. Lowe had communicated with Dr. Purcell
 12 that he felt like there were some issues of
 13 retaliation, did you immediately contact us to
 14 seek advice about how to handle that?

15 A. Yes, I did.

16 Q. Did you make any special efforts on behalf of
 17 the non-tenured teachers that left Daisy
 18 Lawrence with Mr. Lowe -- I think there were
 19 two other -- did you make any special requests
 20 of principals to hire them or tell principals
 21 they had to recommend that they be hired?

22 A. No, I did not. Those individuals were advised
 23 that they were to apply for any position in

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1 the school district that was vacant and that 2 every consideration would be given to try to 3 place them if they were recommended by a 4 principal for those particular positions. But 5 other than that, no other assurances, no other 6 contact from my office that I'm aware of 7 happened in the placement of those three 8 individuals.	1 that there was a letter from you indicating 2 that, yes. 3 Q. Did you discuss that with the superintendent? 4 A. No, I did not. 5 Q. Did you undertake any investigation of that 6 claim? 7 A. No, I did not. 8 Q. Do you know if anybody with the school did? 9 A. No. 10 Q. No, you don't know or no, nobody did? 11 A. Nobody did to my knowledge. 12 MR. PATTY: That's all. 13 (Deposition concluded at 14 approximately 5:50 p.m.) 15 * * * * * 16 FURTHER DEPONENT SAITH NOT 17 * * * * * 18 REPORTER'S CERTIFICATE 19 STATE OF ALABAMA: 20 MONTGOMERY COUNTY: 21 I, Pamela A. Wilbanks, Registered 22 Professional Reporter and Commissioner for the State
23	
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1 Q. And Mr. Lowe -- I know this is an issue or 2 part of his allegation, but as far as 3 Montgomery Public Schools is concerned, the 4 contract he signed was for a teacher/tutor at 5 that school, correct? 6 A. That's correct. 7 Q. And if he had been a reading coach at that 8 school, it still would have been a nine-month 9 position; is that correct? 10 A. That's correct. 11 Q. Even if some of the duties that he performed 12 fell under the duties that are typically for a 13 reading coach? 14 A. That's correct. 15 MS. CARTER: I don't have anything 16 else. 17 EXAMINATION 18 BY MR. PATTY: 19 Q. Were you aware of my letter to Spud Seale the 20 end of the summer of 2005 about Mr. Lowe not 21 being blocked for positions in the school that 22 summer? 23 A. I think I remember being made aware of that,	1 of Alabama at Large, do hereby certify that I 2 JIMMY BARKER 3 who was first duly sworn by me to speak the truth, 4 the whole truth and nothing but the truth, in the 5 matter of: 6 MELVIN LOWE, 7 Plaintiff, 8 Vs. 9 MONTGOMERY COUNTY BOARD OF 10 EDUCATION; VICKIE JERNIGAN, 11 MARK LABRANCE, TOMMIE MILLER, 12 MARY BRIERS, DAVE BORDEN, 13 HENRY A. SPEARS and BEVERLY ROSS, 14 in their official capacities as 15 members of the Montgomery County 16 Board of Education; and DR. CARLINDA 17 PURCELL, in her official capacity as 18 Superintendent of the Montgomery 19 County 20 Board of Education, 21 Defendants. 22 In The U.S. District Court 23 For the Middle District of Alabama

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1 Norhem Division
2 2:05-CV-0495
3 on Monday, January 23, 2006.

4 The foregoing 204 computer printed pages
5 contain a true and correct transcript of the
6 examination of said witness by counsel for the
7 parties set out herein. The reading and signing of
8 same is hereby waived.

9 I further certify that I am neither of kin
10 nor of counsel to the parties to said cause nor in
11 any manner interested in the results thereof.

12 This 3rd day of February, 2006.

13

14

15

16

17

18

19 Pamela A. Wilbanks, Registered
20 Professional Reporter and
21 Commissioner for the State
22 of Alabama at Large.

23

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